

Volume 10

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

IN RE TESLA, INC. SECURITIES  
LITIGATION.

)

) No. 18-cv-04865-EMC

)

San Francisco, California  
Friday, February 3, 2023

**TRANSCRIPT OF TRIAL PROCEEDINGS**

**APPEARANCES:**

For Movants:

LEVI & KORSINSKY, LLP  
1101 30th Street NW  
Suite 115

Washington, D.C. 20007

**BY: NICHOLAS IAN PORRITT, ESQ.**  
**ELIZABETH K. TRIPODI, ESQ.**  
**ALEXANDER A. KROT, III, ESQ.**

LEVI & KORSINSKY LLP  
75 Broadway  
Suite 202

San Francisco, California 94111

**BY: ADAM M. APTON, ESQ.**  
**ADAM C. MCCALL, ESQ.**

LEVI & KORSINSKY LLP  
55 Broadway  
10th Floor

New York, New York 10016

**BY: MAX EDWARD WEISS, ESQ.**  
**KATHY AMES VALDIVIESO, ESQ.**

Reported By: **BELLE BALL, CSR 8785, CRR, RDR**  
Official Reporter, U.S. District Court

(Appearances continued, next page)

**APPEARANCES, CONTINUED:**

For Defendants:

QUINN EMANUEL URQUHART & SULLIVAN, LLP  
51 Madison Avenue  
22nd Floor  
New York, New York 10010

**BY: ALEXANDER B. SPIRO, ESQ.**  
**ANDREW JOHN ROSSMAN, ESQ.**  
**PHILLIP B. JOBE, ESQ.**  
**ELLYDE R. THOMPSON, ESQ.**  
**JESSE A. BERNSTEIN, ESQ.**

QUINN EMANUEL URQUHART & SULLIVAN, LLP  
865 South Figueroa Street  
10th Floor  
Los Angeles, California 90017

**BY: MICHAEL T. LIFRAK, ESQ.**  
**ANTHONY P. ALDEN, ESQ.**  
**MATTHEW ALEXANDER BERGJANS, ESQ.**  
**WILLIAM C. PRICE, ESQ.**

QUINN EMANUEL URQUHART & SULLIVAN, LLP  
555 Twin Dolphin Drive  
Fifth Floor  
Redwood Shores, California 94065

**BY: KYLE K. BATTER, ESQ.**

1 Friday, February 3, 2023

8:22 a.m.

2 P R O C E E D I N G S

3 (The following proceedings were held outside of the  
4 presence of the Jury)

5 **THE COURTROOM DEPUTY:** All rise. Court is now in  
6 session, the Honorable Edward M. Chen is presiding.

7 **THE COURT:** Have a seat, everyone. Good morning.

8 **THE COURTROOM DEPUTY:** Court is calling the case In  
9 Regarding Tesla Inc. Securities Litigation, Case No. 18-4865.  
10 Counsel, please state your appearances for the record,  
11 beginning with the plaintiff.

12 **MR. PORRITT:** Good morning, Your Honor.

13 **THE COURT:** Good morning.

14 **MR. PORRITT:** Nicholas Porritt with Levi & Korsinsky  
15 on behalf of the plaintiff and the class.

16 **THE COURT:** Good morning, Mr. Porritt.

17 **MR. SPIRO:** Good morning, Your Honor. Andrew Rossman  
18 with Quinn Emanuel, here. We've got Mr. Spiro, down the hall.  
19 He's coming.

20 **THE COURT:** All right. While he's coming, I  
21 understand that we are having some technical problems with  
22 display of your -- right, Vicky?

23 **THE COURTROOM DEPUTY:** Yes, both parties.

24 **THE COURT:** So we have our IT people coming. But  
25 obviously, I don't think we can commence argument until we have

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1 that straightened out.

2 But I want to use these few moments before IT gets here to  
3 address the late filings. In particular, the filing of the  
4 proposed demonstratives for the defense. And then the  
5 objections filed thereto by the plaintiff.

6 Just to set the record straight, my understanding is that  
7 these demonstratives were served on the other side past 6:00  
8 last evening. Is that correct?

9 **MS. TRIPODI:** Good morning, Your Honor. Yes. We did  
10 not receive defendant's demonstratives until 6:00 p.m. last  
11 evening.

12 **THE COURT:** 6:00 p.m.

13 **MS. TRIPODI:** I'm sorry, 8:00 p.m., Your Honor.

14 **THE COURT:** 8:00 p.m. And you did not file your  
15 objections until some early morning hours, like 1:00 in the  
16 morning?

17 **MS. TRIPODI:** We did not, Your Honor.

18 **THE COURT:** And you served your closing slides on  
19 Wednesday?

20 **MS. TRIPODI:** We did, Your Honor.

21 **THE COURT:** All right.

22 So, as you know, I set two rules in this case. The  
23 two-day exchange rule which I have not altered. You are  
24 supposed to exchange demonstratives and exhibits that are going  
25 to be used, two days. And there's a reason for that. The

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1 reason is you give the other side notice. You give the Court  
2 notice. And so you avoid a situation where the Court gets  
3 nothing until it gets an objection at 1:00 or 2:00 in the  
4 morning.

5 Number two, I set a 6:00 rule, after you all filed massive  
6 filings after the first days. You two might recall. And I  
7 said I wouldn't take anything after 6:00. So, as far as I'm  
8 concerned, the defendant has violated both rules.

9 And for your benefit, Mr. Spiro, I'm going over the fact  
10 that the plaintiffs -- the defense slides were not served until  
11 last night after 6:00. That's undisputed. Wasn't served until  
12 8:00. And that is a violation of my two-day rule and my 6:00  
13 rule. And therefore, I get this (Indicating), and this  
14 (Indicating), at 2:00 in the morning.

15 **MR. SPIRO:** I -- I apologize, Your Honor.

16 **THE COURT:** And when you left here, you said you were  
17 going to work with each other and get me the demonstratives so  
18 we could avoid this very situation.

19 **MR. SPIRO:** Your Honor, the only thing that the  
20 defense can do is apologize. We rested our case, we did our  
21 best. And frankly, from our perspective, because we're not  
22 doing sort of visual graphs or other things, I mean, I don't  
23 want to quibble and -- the gravamen of what I'm trying to tell  
24 the Court is I apologize.

25 But we don't really view these things as demonstratives,

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1 is also the truth. I mean, the agreement that we had with  
2 counsel that I put on the record when we were last in court and  
3 the time before that was that unless it's a graph, a chart or  
4 something that is not just directly testimony exhibit, it  
5 wouldn't be a demonstrative. And for what it's worth, you  
6 know, I intentionally told folks, you know, don't put any  
7 titles on these, there is no titles on them. I mean, from my  
8 perspective, it is just testimony and exhibits.

9 If the Court doesn't want to allow lawyers' statements to  
10 be in demonstratives, I've had judges say that, then both sides  
11 can just remove the exhibit or two on each of ours that have  
12 the words of lawyers, as opposed to witness statements.

13 Other than that, there's a few of those slides that we're  
14 not even using at this point. I don't think that there's much  
15 there there with this. But again, as I started with, we  
16 apologize that there was a delay.

17 **MS. TRIPODI:** Your Honor, if I may?

18 **THE COURT:** Yeah.

19 **MS. TRIPODI:** Just a few slides to flag. And again,  
20 I'm sincerely apologetic for our late response to the  
21 demonstratives.

22 Slide 2, which also repeats on Slide 34 and Slide 53 has  
23 an attorney's blurb regarding material misrepresentation. And  
24 my concern is that this is different than what is stated in the  
25 jury instruction. And so I think this will be very confusing

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1 to the jury. And any indication from the lawyers of what their  
2 view of material misrepresentation is that doesn't comport with  
3 what's in the jury instructions, is going to be prejudicial.

4 The other thing I wanted to point out was Slide 7, which  
5 has some testimony from Mr. Littleton. During the course of  
6 Mr. Littleton's testimony as he was responding to defense  
7 counsel's questions, he gave sort of an active response of  
8 "Uh-huh" that was typically followed up with testimony. And  
9 the slides present only Mr. Littleton's response of "Uh-huh,"  
10 which is not the full and complete picture.

11 So I don't want to quibble with too many of the  
12 demonstratives but I do want to point out several that I think  
13 will be very prejudicial and confusing to the jury.

14 **MR. SPIRO:** I can maybe make short change of this if  
15 the Court wants, which is -- I mean, we think this is the  
16 correct statement of the law and drawn from the instructions.  
17 I mean, I'm also going to say to the jury as the judge -- as  
18 Your Honor will, that: The judge is going to tell you what the  
19 law is. They have written jury instructions. I don't think  
20 this is a big deal.

21 If it is, and the Court orders, you know, we can -- we can  
22 just copy and paste a little bit more precisely rather than  
23 using the dot, dot, dot method of saying things.

24 And as to the answer from Mr. Littleton, we just changed  
25 it to add what they wanted. So I think most of this is null

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1 and moot at this point.

2           **THE COURT:** All right. I'm going to order that  
3 attorney comments and interpretations such as attorney  
4 interpretation or reinterpretation of instructions will be  
5 removed because that is not an exhibit that's already been  
6 there.

7           And so anything new that is a demonstrative -- I'm going  
8 to get to the merits in a minute because I think we do have to  
9 address that. But procedurally, that is late, and I'm not  
10 going to allow that to be filed.

11           So things of a factual nature, there's a fair argument  
12 that that's really not a demonstrative. You're just taking  
13 snippets of exhibits. In a way it is, because you're  
14 emphasizing certain things. But that's different, to take your  
15 first point, than attorney comment. So, attorney comments  
16 should be removed.

17           **MR. SPIRO:** So, okay. So then taking the Court's  
18 direction, we'll just change this to the law, not, not the  
19 change, and both sides will then remove attorney comments.  
20 Right?

21           **THE COURT:** I didn't say both sides, because they  
22 served -- at least they served theirs on you, as I understand  
23 it, on Wednesday.

24           Correct?

25           **MS. TRIPODI:** Yes, Your Honor.



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1           **MR. SPIRO:** But Your Honor, and I can show Your Honor  
2 the transcript, I mean we had this in front of the Court  
3 several times saying that we had reached an understanding  
4 between the parties. And when we met and conferred and when we  
5 discussed this, we didn't understand them to be expecting us to  
6 be providing these, based on the conversations that I had with  
7 them.

8           And I put that on the record when we left court. So if  
9 the Court looks at that transcript -- and I'm happy to hand it  
10 up -- this was clear as day to the defense when we left here.  
11 We just literally sent this in an abundance of caution, and  
12 were surprised when we heard back from them.

13           **THE COURT:** Wait, you're saying that you didn't have  
14 an understanding that you would exchange two days in advance,  
15 on Wednesday?

16           **MR. SPIRO:** Correct. And it's in the record.

17           **MR. PORRITT:** Well, Your Honor, if I may -- sorry.

18           The conversation I had with Mr. Spiro, I'm not sure it  
19 goes as far as an agreement. But it was, as far as he was  
20 concerned that using just transcripts and exhibits, you know,  
21 wouldn't need to be exchanged because, as we have discussed,  
22 they are not really demonstratives, necessarily.

23           **THE COURT:** I did read the transcript, by the way.  
24 I'm familiar with it. I just read it.

25           **MR. SPIRO:** Okay.

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1           **MR. PORRITT:** The agreement didn't extend to true  
2 demonstrative, which is attorney comments, graphs, charts,  
3 those --

4           **THE COURT:** Right. Stuff that had already been shown,  
5 that's what you all said, that wasn't going to be a problem,  
6 don't worry about it. That's why I'm saying stuff that's  
7 already shown -- evidence, testimony, things that are already  
8 there -- I'm not going to say is a problem with respect to my  
9 expectation of timely exchange.

10           But new demonstratives, in the sense that this is fairly  
11 significant, to -- to now recast or interpret an instruction is  
12 an attorney comment.

13           **MR. SPIRO:** So, in any event, that has been changed.  
14 And in terms of their request regarding Mr. Littleton's sort of  
15 second answer or full answer, we've changed that too. So  
16 that's why I'm saying that I think that we've mooted these  
17 issues. And we again apologize.

18           **THE COURT:** All right, so are you going to remove  
19 that? Or are you going to just quote the instruction?

20           **MR. SPIRO:** We'll just quote the full instruction.

21           **THE COURT:** The full instruction, not put a twist on  
22 it.

23           **MR. SPIRO:** No, no, no. There's a twist, but no  
24 twist.

25           **THE COURT:** Whatever you want to call it.

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1           **MR. SPIRO:** Sure.

2           **THE COURT:** Well, if that's the case, and there's not  
3 other sort of attorney comments but snippets of testimony --  
4 and of course there's always going to be some debate. Now,  
5 there's some debate about -- is there another accuracy issue  
6 with respect to the quote of some testimony that you think --

7           **MS. TRIPODI:** No, Your Honor, I believe the accuracy  
8 issue was with Slide 7.

9           And if I could request of counsel that we see the language  
10 that you put on Slide 2.

11           **MR. SPIRO:** Sure.

12           **MS. TRIPODI:** Two other issues --

13           **THE COURT:** And first, a couple other places, 53 --

14           **MR. SPIRO:** We're going to switch it all, Your Honor.

15           **THE COURT:** All right.

16           **MS. TRIPODI:** Your Honor, with respect to Slide 26,  
17 Exhibit 68 was utilized there. And Exhibit 68 has not yet been  
18 admitted into evidence. As well as in Slide 69, there were  
19 numerous headlines from articles that have not yet been  
20 admitted.

21           **MR. SPIRO:** We took out the headlines. And as to 26,  
22 it was part -- it was admitted as part of Mr. Koney's  
23 deposition.

24           **THE COURT:** Was it admitted into evidence here?

25           **MR. SPIRO:** Yes.

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1           **THE COURT:** Okay.

2           **MS. TRIPODI:** Your Honor, I don't believe that that's  
3 the case.

4           **THE COURT:** Well, Vicky will have that.  
5 Vicky, can you check -- which number?

6           **MS. TRIPODI:** 68, Your Honor.

7           **THE COURT:** Was 68 admitted?

8           **THE COURTROOM DEPUTY:** Let me check.

9           **THE COURT:** What else?

10          **MR. SPIRO:** Just to be clear, this was as part of the  
11 Koney deposition that we did.

12          **THE COURT:** Right. But there would have been a motion  
13 at trial to admit that deposition here, admit that exhibit  
14 here.

15          **MR. SPIRO:** Correct, we -- we offered --

16          **THE COURT:** And I assumed, I thought every day you all  
17 were checking to make sure.

18          **MS. TRIPODI:** We were, Your Honor. And the  
19 designations had gotten cut before Mr. Koney was played, so  
20 perhaps 68 may have been cut from those designations.

21          **MR. SPIRO:** It wasn't, Your Honor. I mean, this was  
22 the last day -- remember, this was the last day we were here as  
23 we were racing to get the case to the jury. Every  
24 deposition -- and the parties have understood as the Court has  
25 the entire time that the deposition and exhibits were going in.

1 So I don't see that as an issue.

2 **THE COURT:** Well --

3 **THE COURTROOM DEPUTY:** I don't show 68.

4 **THE COURT:** All right. Our records do not show 68 as  
5 having been admitted. Maybe that was an oversight on your part  
6 or somebody's part. But --

7 **MR. SPIRO:** I would ask that the Court admit the  
8 exhibits that were part of Mr. Koney's deposition. That's what  
9 we understood when it was being played. And this is what we --  
10 it was in the designations that were, and the Court ruled on  
11 it. And we submitted the deposition and its accompanying  
12 exhibit.

13 So if the Court didn't accept the depo designation  
14 exhibits, that seems to me on the final day of trial as  
15 something that is -- frankly, the Court could let me reopen my  
16 case right now.

17 So I'm asking that the Court allow, as they've already  
18 ruled, that the deposition that went in, indicating --

19 **THE COURT:** Okay, well, our record shows it has not  
20 been admitted, and now you're asking to reopen to admit it.

21 **MR. SPIRO:** Well, I'm taking issue with that, with --

22 **THE COURT:** Okay, well --

23 **MR. SPIRO:** I'm not taking issue -- yeah.

24 **THE COURT:** It's not been admitted. As far as the  
25 record goes, it's not been admitted.

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1           So I want your response to now Mr. Spiro's request for  
2 dispensation to allow him to admit this.

3           **MS. TRIPODI:** Your Honor, my understanding was that 68  
4 was not disclosed in connection with Koney's deposition, nor  
5 was it admitted.

6           **THE COURT:** And so you object.

7           **MS. TRIPODI:** Yes. We object, Your Honor.

8           **MR. SPIRO:** That's just factually incorrect, and we  
9 can show that to the Court, so --

10          **THE COURT:** Well, the evidence is closed, and your  
11 motion is denied.

12          So, let's get to the critical question because there's  
13 going to be -- whether it's in here or not, there's going to  
14 be, I assume, argument about how to interpret material  
15 misrepresentation, and the question of both 1 and 2 having to  
16 be satisfied to constitute material misrepresentation.

17          And I want to ask the plaintiffs if you can imagine or if  
18 you can explain to me, is there a scenario where you could meet  
19 1, that something is shown to be of such import that there is a  
20 substantial likelihood that a reasonable investor would  
21 consider that fact important in deciding whether to buy or  
22 sell, which, I think all of you agree that's -- that's the  
23 overall overarching definition, and yet, the investor would not  
24 be under the impression that the state of affairs differs in a  
25 material way from the one that actually exists.

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1 Is that metaphysically possible?

2 **MR. PORRITT:** I think -- there's nothing in the jury  
3 instructions about the classic TSC definition, does it alter  
4 the total mix of information available to the reasonable  
5 investor.

6 I mean, my view is materiality is this nebulous sort of  
7 concept. And I view them as two statements of the same thing.  
8 It's not a two-part test, in my opinion. They are different  
9 ways of stating the same test, in my view. So I don't think --  
10 I don't view them as a checklist, you need to satisfy one and  
11 you need to satisfy the other. It's: You need to satisfy  
12 materiality, and these are two ways of describing materiality.  
13 That's kind of how I view it. I don't know if that answers the  
14 Court's question or is helpful, but --

15 **THE COURT:** To be realistic here, I anticipate from  
16 the slides and some of the -- the JMOL motion that there's  
17 going to be an argument from the defense that the state of  
18 affairs that was represented by "Funding secured," et cetera,  
19 et cetera -- although --

20 **MR. PORRITT:** Was not materially different from --

21 **THE COURT:** Was not that materially different. Even  
22 though it wasn't actually accurate, because it wasn't actually  
23 secured, as I have found, the argument is going to be: Well,  
24 it was as good as, very close to, because, you know, X, Y, Z.

25 And if the jury were to so find, this instruction suggests

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1 that they would -- that the jury could find non-materiality.

2 **MR. PORRITT:** Right. And I think -- I mean, I'd say  
3 we're getting awfully sort of philosophical, metaphysical at  
4 this point and slicing the salami awfully thin. I mean, those  
5 are two accurate statements of the law of what materiality is.  
6 I guess we would object to the idea that this is a two-part  
7 test, that you need to satisfy both.

8 I view them -- we would view them as really both stating  
9 two aspects, if you like, of really the same test. I mean, is  
10 it material is just sort of this very nebulous sort of concept,  
11 like, is it important to the reasonable investor. That's  
12 really the test.

13 And you could say there's a change from what does "false"  
14 mean? It means it's different from what is actually the case.  
15 That's what I view that statement as getting towards.

16 So I think the evidence obviously is very clear that it  
17 didn't differ in a material way, so I think it's unlikely a  
18 jury, certainly on this record, but really any record, would  
19 find that important to a reasonable investor, but then not  
20 different in a material way from the actual state of affairs?  
21 I mean, I find it difficult to conceive of a state of facts  
22 where that would ever really apply. So that's kind of our  
23 perspective.

24 **THE COURT:** All right. Response?

25 **MR. SPIRO:** It doesn't seem the plaintiffs are taking



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1 an issue with this. They didn't file an exception, either, to  
2 this jury instruction.

3 If the Court is asking me what the law is, I think the law  
4 is clear that if -- I, mean in this hypothetical scenario, if a  
5 juror was -- if we got a note from a juror that says: I don't  
6 think it was important, the answer is he's not liable.

7 If a juror said "Well, I think that the concept of funding  
8 is important but I don't think it differed from the state of  
9 affairs at all and I think he's not liable, in that  
10 hypothetical which I don't think is live, the answer to both is  
11 not liable.

12 So that's the way I analyze it. And I understood the  
13 Court to analyze it the same way. In fact, I took the example  
14 that the Court gave in the jury instruction to be just that.  
15 And there were no exceptions filed to this jury instruction.  
16 And the jury instruction is what it is.

17 **THE COURT:** Well, the question is whether, in your  
18 argument, you can represent or argue to the jury that your sort  
19 of take on this instruction is more explicit about the plus  
20 factor of 1 and breaking it into two things and you have to  
21 have 1 and 2.

22 And my view is that unless somebody completely  
23 misrepresents the instruction, you know, I remind -- well, the  
24 other side has a chance to give their spin on the instruction  
25 if it differs. So long as it's sort of within the reasonable

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1 universe, you know, I generally allow that, unless I think the  
2 jury's going to be confused. And then I might say something  
3 about: Well, each side is kind of giving you their take on the  
4 instruction; you are to follow the instructions as I give it to  
5 you. Which is of course always singularly unhelpful to them,  
6 but I guess I'll have to play that by ear.

7 **MR. SPIRO:** I can remind them, myself, Your Honor, I'm  
8 not trying to take your rule, your important rule away. So --

9 **THE COURT:** I'm giving you a little bit of rein,  
10 you'll have some rein. If you want to take your spin, as long  
11 as you stay within the orbit, I'm not going to intervene.

12 **MR. PORRITT:** I don't think I'm giving away a state  
13 secret to say I'll be discussing the definition of materiality  
14 in my closing argument as well.

15 **THE COURT:** Again, it's probably not going to be  
16 different, because we all know what the arguments are going to  
17 be, and I can hear the counter arguments, and I think that's  
18 probably going to be a pretty important issue, is my guess, in  
19 this case. One of many issues.

20 So, all right. So you make your adjustments. Please make  
21 sure that they've seen it because I don't want to hear  
22 objections in the middle of --

23 **MR. SPIRO:** Yeah. We're not going to be objecting to  
24 theirs, either.

25 Your Honor the one issue that you touched on at the

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1 beginning of the colloquy but we hadn't come back to is that --  
2 we went back and forth on this. They have a slide that has  
3 attorney statements. We have a slide that has an attorney  
4 statement.

5 I mean, if, if some -- some judges do not allow that, some  
6 judges do. I don't -- I just wanted to make sure I have  
7 consistency on that.

8 **MR. PORRITT:** Your Honor, I'm not sure which slide  
9 Mr. Spiro is referring to. It would be helpful to have more  
10 specific --

11 **MR. SPIRO:** It's the one with all of my comments.

12 **MR. PORRITT:** Oh. Okay.

13 **MR. SPIRO:** Which I like, but still think I -- I think  
14 the law says -- says it's -- they have a slide about my  
15 comments.

16 **THE COURT:** What number is that?

17 **MR. SPIRO:** 47.

18 **MR. PORRITT:** We can cut that slide, Your Honor.  
19 That's fine.

20 **THE COURT:** 47, that's the egregious corporate  
21 governance?

22 **MR. SPIRO:** No. The numbers may have changed,  
23 Your Honor. It's the --

24 (Off-the-Record discussion between counsel)

25 **THE COURT:** 48 is the Section 20 liability. So that's

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1 not it.

2 (Off-the-Record discussion between counsel)

3 **MR. SPIRO:** We have an agreement. Your Honor doesn't  
4 have to fuss with it.

5 **THE COURT:** Okay. The reporter needs to write down --  
6 what did you just say?

7 **MR. SPIRO:** We have an agreement. So it's not -- the  
8 Court's not needed.

9 **THE COURT:** Okay. Good.

10 **MR. PORRITT:** And there was one slide that they had  
11 which had Mr. Spiro's writing on the easel during his  
12 examination of Mr. Fries. Obviously we object to that. That's  
13 just Mr. Spiro's writing.

14 **THE COURT:** If it's not a piece of evidence --

15 **MR. SPIRO:** Well, wait. That is something that was  
16 the demonstrative. And I don't want to have to redo the easel  
17 and use my hour, 25.

18 **THE COURT:** You did say demonstratives already shown  
19 were --

20 **MR. SPIRO:** Correct, exactly.

21 **THE COURT:** Okay.

22 **MR. SPIRO:** Correct.

23 (Reporter clarification)

24 **THE COURT:** Are okay. So that was in the transcript.

25 **MR. PORRITT:** All right. Understood, Your Honor.

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1 Okay.

2 **THE COURT:** All right. So, we just need IT.

3 **THE COURTROOM DEPUTY:** He's here. He's sitting in the  
4 jury room, waiting.

5 **THE COURT:** He's here, waiting? All right, so I'll  
6 wait. It hinges on our IT person. As soon as that's ready to  
7 go, we're going to bring the jury in.

8 (A pause in the proceedings)

9 **THE COURT:** Just to forewarn you before you start your  
10 arguments, in light of everything that we've just done, I'm  
11 going to reread the -- the usual admonition that arguments and  
12 statements by lawyers is not evidence.

13 (Recess taken from 8:48 a.m. to 9:09 a.m.)

14 (The following proceedings were held outside of the  
15 presence of the Jury)

16 **THE COURT:** All right, I think IT is done. Realtime  
17 is up. Keep our fingers crossed nothing else blows up around  
18 here.

19 And Vicky is retrieving the jury, so we will start  
20 momentarily.

21 (The following proceedings were held in the presence of  
22 the Jury)

23 **THE COURTROOM DEPUTY:** All rise for the jury.

24 **THE COURT:** All right. Have a seat, everyone. Good  
25 morning, ladies and gentlemen of the jury. Welcome back.

**CLOSING ARGUMENT / PORRITT**

1 Thank you again for your promptness. And we had a few things  
2 to discuss, as well as, again, some more technical problems  
3 that delayed us. But I think all the systems are up and  
4 running, at least for now. And so we are now going to proceed.

5 You have been instructed on the law on Wednesday and, as I  
6 indicated, this is now the opportunity for each side to present  
7 their closing arguments. After they do so, I will give you  
8 some final instructions and then you will be directed to  
9 commence your deliberations. Just a reminder, as you are about  
10 to hear closing arguments, that arguments and statements by the  
11 lawyers are not evidence. They're not witnesses. And their  
12 closing arguments is intended to help you interpret the  
13 evidence, but, in itself, their statements are not evidence.  
14 And so if the facts as you remember them differ from the way  
15 the lawyers have stated them, it's your memory that controls.

16 So, with that stated, Mr. Porritt, you have the floor.

17 **MR. PORRITT:** Thank you very much, Your Honor. And I  
18 have a couple of demonstratives just to put on these easels  
19 here, Your Honor.

20 **THE COURT:** Okay.

21 **CLOSING ARGUMENT**

22 **BY MR. PORRITT**

23 Ladies and gentlemen of the jury, first of all, I want to  
24 thank you on behalf of myself, my client, Glen Littleton, who's  
25 here back in the courtroom today. Sorry he missed a few days

## CLOSING ARGUMENT / PORRITT

1 in between, but he's back here to see -- he was here at the  
2 beginning and now he's here at the end, and, of course, on  
3 behalf of my colleagues here at the table, who've spent the  
4 last three weeks here together, for your time and attention  
5 over the last three weeks.

6 I'm sure you have learned about -- learned exciting new  
7 words like "implied volatility" and "special purpose vehicle"  
8 that you'll find very useful once you return to regular life  
9 after your jury service is over.

10 But seriously, this is a very important case, with  
11 important issues not just for Glen Littleton, the class of  
12 Tesla investors who I represent, or even Elon Musk and Tesla,  
13 but for every public company, and indeed, in many ways, our  
14 entire society. Because our society's based on rules. We have  
15 rules for a reason. We need rules to save us from chaos and  
16 anarchy. And whether it is the securities markets or a  
17 football game, rules must be fair and must be applied to  
18 everyone.

19 And this case, ultimately, is about whether rules that  
20 apply to everyone else should also apply to Elon Musk.

21 When you or I submit an official form, whether it is a  
22 credit card application or a job application, we have to make  
23 sure every detail is right. If we make a mistake, say  
24 something that's inaccurate, or exaggerate, we will get into  
25 big trouble.

## CLOSING ARGUMENT / PORRITT

1       Elon Musk does not feel the same way. To Elon Musk, if he  
2 believes it, or even just thinks about it, then it's true, no  
3 matter how objectively false or exaggerated it may be.

4       Now, that may work in his businesses; that's not an issue  
5 for this trial. But it does not work in the securities markets  
6 for public companies. Securities markets have rules governing  
7 what you can and cannot say. And one of those basic rules is  
8 that what you say must be true and accurate. And we have these  
9 rules for good reason.

10       The U.S. securities markets, the stock markets, is the  
11 largest in the world. Each and every one of our lives are in  
12 some way affected by them, whether it is your employer, your  
13 pension, insurance company, or the mortgage on your home. Your  
14 children are affected if they are paying college tuition.  
15 Everyone is affected, one way or another. And this is unique.  
16 Anyone can buy shares in America. That's not true anywhere  
17 else. But it only works because there are rules to keep people  
18 honest. So that people can trust the information in the  
19 market. Without trust, the market stops working. Without  
20 trust, speculation takes over, which destroys markets. It  
21 brings economies to a shuddering halt because nobody knows what  
22 is true and what is false. No one can rely on the value of  
23 their investments.

24       Securities rules make sure the markets are fair and  
25 everyone is held to the standard. Billionaires are treated the



## CLOSING ARGUMENT / PORRITT

1 same as everyone else. They don't get to operate under a  
2 different set of rules. Where certain player -- when certain  
3 players in the market are dishonest, any -- ordinary people can  
4 get hurt.

5 Now, the Court has instructed you that you must assume  
6 that Elon Musk's tweets at issue in this case were untrue.  
7 That means they were false. The Court has also instructed you  
8 that Elon Musk made the tweets with reckless disregard to their  
9 truth. That is, with a fraudulent state of mind. Elon Musk  
10 acted fraudulently. That is not in dispute in this trial.

11 So the question becomes whether Elon Musk should be held  
12 accountable for his fraudulent and false tweets. Whether he  
13 should pay for the harm that they caused. And if Elon Musk is  
14 not to be held accountable for fraudulent statements as made in  
15 this case, tweets made while driving to the airport without any  
16 consideration or regard for the chaos in the market that  
17 followed, then we need to question why we have any rules at  
18 all. If the securities laws do not prevent this sort of  
19 behavior from corporate CEOs, then what behavior do they  
20 prevent? What purpose do they serve?

21 But I believe the securities laws do have a purpose. And  
22 they prohibit behavior like Elon Musk's in this case.

23 Defendants will put on a show -- you'll hear from  
24 Mr. Spiro shortly -- like they've been doing for the last three  
25 weeks with all these differing explanations and excuses for why

## CLOSING ARGUMENT / PORRITT

1 Elon's tweets were not really fraudulent. Do not let them  
2 confuse you. This is simply deflection and misdirection from  
3 the undisputed facts. Elon Musk published tweets that were  
4 false with reckless disregard as to their truth. And those  
5 tweets caused investors harm. Lots of harm. That is all that  
6 is necessary to find liability here. And I feel confident  
7 asking you to make that finding.

8 In light of these findings, as I told you at the  
9 beginning, and I'm telling you now after three weeks, this is a  
10 simple case.

11 (Document displayed)

12 **MR. PORRITT:** Because you've been told to assume that  
13 the tweets were untrue. And because you've been told that Elon  
14 Musk -- you must assume that Elon Musk acted with reckless  
15 disregard.

16 It's also a simple case when it comes to damages and harm  
17 because we -- plaintiff was the only party to present evidence  
18 on damages. Defendants did not even present any expert  
19 testimony or other evidence as to the actual damages at issue  
20 in this case.

21 So that just leaves you with one decision: Were Elon  
22 Musk's tweets, quote, "material"? Were they important to  
23 investors?

24 Let's look at Exhibit 8.

25 (Document displayed)

## CLOSING ARGUMENT / PORRITT

1           **MR. PORRITT:** We've seen it a lot in the last three  
2 weeks. This is the tweet that started this entire case. Once  
3 again, the Court's instructed you to assume that this  
4 statement, "Funding secured," is false, and made fraudulently.

5           The Court has also instructed you -- so, that was made at  
6 least with reckless disregard to whether the statement was true  
7 or not. "Reckless" means highly unreasonable conduct that is  
8 an unreasonable departure from ordinary care, presenting a  
9 danger to investors which was either known to Elon Musk, or so  
10 obvious that Elon Musk must have been aware of it. That's the  
11 definition in the jury instructions. That is what is to be  
12 assumed. And that is enough to establish liability under  
13 Rule 10b-5.

14           If defendant has reckless disregard for whether a  
15 statement is untrue, as you are to assume from Mr. Musk here,  
16 then the scienter or state of mind requirement is satisfied.  
17 The plaintiff does not have to show knowledge. And you don't  
18 need to find knowing conduct by Elon Musk to find him liable  
19 under Rule 10b-5. That is very clear here in the Instruction  
20 No. 9, that shows it can be established either by knowledge or  
21 by reckless disregard.

22           What, then, is left for you to decide, you may ask. The  
23 only issue is whether this statement, "Funding secured," was  
24 material. And let's look at the definition of "material" here  
25 in the jury instructions.

## CLOSING ARGUMENT / PORRITT

1 (Document displayed)

2 **MR. PORRITT:** It says: Did the indisputably false  
3 statement "Funding secured," give a reasonable investor the  
4 impression of a state of affairs that differs in a material way  
5 from the one that actually exists?

6 In other words, would a reasonable investor consider the  
7 fact of funding secured important in deciding whether to buy or  
8 sell Tesla's stock or options?

9 Importantly, it is not necessary for a fact to change the  
10 way a reasonable investor would invest. It only has to be  
11 important to the reasonable investor to be material. A fact  
12 that confirms an existing decision to purchase or sell stock is  
13 still material. And when considering the materiality of the  
14 statement of "Funding secured," first look at the data.  
15 Because the data doesn't lie.

16 (Document displayed)

17 **MR. PORRITT:** Plaintiff's expert Michael Hartzmark  
18 provided you with strong evidence, qualitative and  
19 quantitative, showing how the tweet affected Tesla's stock and  
20 option prices.

21 Here is the chart he prepared. See it on the screen in  
22 front of you. This is the August 7th stock price for Tesla  
23 with the volume at the bottom.

24 When you look at materiality, the importance to investors  
25 of the statement "Funding secured," you must first look at what

## CLOSING ARGUMENT / PORRITT

1 investors actually did. Did they buy or sell Tesla securities  
2 following the tweet? And the evidence on this chart is stark  
3 and undisputed. Within a minute, Tesla's stock price shot up.  
4 Volume shot up. It shot up so much that Nasdaq halted trading.  
5 The very stock exchange that Tesla stock trades on halted  
6 trading.

7 **THE COURT:** Mr. Porritt?

8 **MR. PORRITT:** Yes.

9 **THE COURT:** I'm going to ask you, I don't know if  
10 you're going to use these -- you're using the screen, correct?

11 **MR. PORRITT:** Yes.

12 **THE COURT:** I don't know what these -- if these poster  
13 boards have something -- because I can't see the jury.

14 **MR. PORRITT:** Oh, I apologize, Your Honor.

15 **THE COURT:** And I'd like you to put it up when you're  
16 actually going to use it, unless there's something -- I can't  
17 see what's on there. So I would like you to put it up when you  
18 are going to use it, and not just have it up for the entire  
19 time because I'm -- my view is blocked.

20 **MR. PORRITT:** All right. Very good, Your Honor. All  
21 right. I'll -- thank you.

22 **MR. APTON:** Move them here (Indicating)?

23 **THE COURT:** And that goes for both of those. Just --  
24 just put them down, so we all can see the jury until you use  
25 it. That goes for the other one as well.

## CLOSING ARGUMENT / PORRITT

1           **MR. PORRITT:** Okay, very good, Your Honor.

2           **THE COURT:** Thank you.

3           **MR. PORRITT:** I was trying to avoid putting them up in  
4 the middle of the presentation.

5           **THE COURT:** Sorry.

6           **MR. PORRITT:** That -- this is -- that's fine.

7           And you also saw on August 7th during the trading halt,  
8 that clip played during Dr. Hartzmark's testimony, Mike  
9 Santoli, on the floor of the New York Stock Exchange, calling  
10 the funding secured the big number.

11          And if you turn to the stock options, you saw Professor  
12 Heston described how the price of long-term stock options went  
13 down straight after the tweets on August 7th. The first tweet.  
14 How options investors like Glen Littleton started seeing the  
15 value of their investments evaporate in minutes because Elon  
16 claimed to have funding discussed.

17          But it's not limited just to the trading data. As  
18 Dr. Hartzmark explained again, you look to the qualitative.  
19 What investors actually thought. And you've heard from one --  
20 the first Tesla investor you heard from was Mr. Littleton,  
21 himself.

22          And he testified that on learning that Elon had said  
23 "Funding secured" for a going-private transaction of \$420 per  
24 share, he immediately knew, based on his experience, decades  
25 trading, that he had to sell all his Tesla stock options

## CLOSING ARGUMENT / PORRITT

1 because they had become worthless as a result of the tweet.

2 He sold them at the market price, which was starting to  
3 reflect the tweet. And even after selling them as quickly as  
4 he reasonably could, he still lost 75 percent of their value.  
5 Millions of dollars to him. There's no question that "Funding  
6 secured" was material to Glen Littleton.

7 And you also heard from Tim Fries who bought Tesla stock  
8 after hearing "Funding secured." He bought it at the market  
9 price of \$380 because he believed Elon would take Tesla private  
10 at 420 with funding secured. He -- there is no question that  
11 that affected his decision to buy or sell -- to buy, in this  
12 case, Tesla's -- Tesla stock.

13 But, ultimately, materiality is an objective test. What  
14 would a reasonable investor think about the statement? The  
15 opinions of Glen Littleton and Tim Fries are just two examples.  
16 You need to consider the whole range of what the market  
17 thought, as well as the market data. And what does this  
18 evidence show?

19 First, bear in mind the context of a going-private  
20 transaction. Professor Subramanian explained there was a  
21 recognized understood process for going-private transactions,  
22 based on his analysis of over 75 of these transactions over the  
23 last 15 years. This process involves detailed financial and  
24 legal analysis. And that financing is reviewed and arranged  
25 before the proposal is announced. Before the transaction is

## CLOSING ARGUMENT / PORRITT

1 announced.

2 That was Professor Subramanian's view, and that was  
3 confirmed by the evidence in this case, from Egon Durban and  
4 Dan Dees. Elon's chosen bankers confirmed this process. They  
5 agreed with Professor Subramanian, the evidence, that this  
6 process is the standard that is expected to be followed.

7 (Document displayed)

8 **MR. PORRITT:** Both of them, Silver Lake and  
9 Goldman Sachs, presented to Elon a timeline by which this  
10 going-private transaction would be affected. Both of them  
11 stressed getting written commitments of funding before making a  
12 formal proposal and before disclosing the transaction.

13 Mr. Durban, who has special importance here because of his  
14 prior experience with the Dell transaction, testified: Funding  
15 is not committed until there is a written commitment. See the  
16 testimony there in front of you.

17 So the experts, Professor Subramanian and Mr. Durban and  
18 Mr. Dees, confirm that when a going-private transaction is  
19 announced with funding secured, the market expects that  
20 committed funding has been arranged and agreed. And if you  
21 need even further commitment -- confirmation on this point look  
22 no further than Martin Viecha, Tesla's own head of investor  
23 relations. When he read the tweet, he thought it meant the  
24 offer was as firm as it gets and that financing is secured,  
25 regardless of other assumptions.



## CLOSING ARGUMENT / PORRITT

1 (Document displayed)

2 **MR. PORRITT:** That is because you don't go full-on  
3 public with a going-private transaction unless that has been  
4 arranged. And that is Tesla's own definition of "funding  
5 secured."

6 And finally, if all of that wasn't enough that I presented  
7 already, you look at what analysts -- Dr. Hartzmark described  
8 how important analysts are in interpreting what the market  
9 thinks is important.

10 We looked at Ryan Brinkman. You saw him on videotape.  
11 The JP Morgan analyst. Stated categorically: "Either funding  
12 is secured or it is not secured, and Tesla's CEO says funding  
13 is secured."

14 And now we've placed particular emphasis -- Dr. Hartzmark  
15 placed emphasis on Ryan Brinkman and JP Morgan. And why is  
16 that important?

17 First, Mr. Brinkman was the first analyst to take  
18 significant steps in response to the August 7th tweets. He  
19 adjusted his target price. And Dr. Hartzmark explained to you  
20 how important that is for analysts. This is the price that  
21 they tell their clients that they are expecting Tesla to trade  
22 in the future.

23 And he was -- he -- to get -- to change the target price,  
24 he needs approval within JP Morgan. And he got that. He  
25 changed his target price after the "Funding secured" and the

## CLOSING ARGUMENT / PORRITT

1 second "Investor support is confirmed" tweet.

2 The second, JP Morgan is the largest commercial bank in  
3 the United States. It's very respected. It has millions of  
4 customers. Mr. Brinkman's reports are read by millions of  
5 investors. If you wanted to know what a reasonable investor is  
6 thinking, a good place to start is to read the JP Morgan  
7 analyst reports.

8 So that is what the market understood "Funding secured" to  
9 mean. An actual commitment. And now, as you're instructed,  
10 let's compare that to the actual state of affairs, and see if  
11 there's any difference.

12 Elon claims that "Funding secured" referred to his meeting  
13 with the Saudi PIF on July 31, that we have heard so much about  
14 at this trial. That is what he said at the time. And that's  
15 what he's told you in this litigation when we specifically  
16 asked him what "Funding secured" referred to. And he told us,  
17 under oath: Saudi PIF. And as you have heard, the discussions  
18 with the Saudi PIF fall a long way short of a legally committed  
19 financing, as the market understood "Funding secured" to mean.

20 You have heard from three participants in the meeting with  
21 PIF: Elon Musk, Deepak Ahuja, and Sam Teller. All of them  
22 aligned with defendants. None of them took any notes of the  
23 meeting. And that, in itself, tells you something. No notes  
24 taken at this meeting, which lasted about 45 minutes.

25 Apparently, a six -- potentially 60 billion-dollar financing

## CLOSING ARGUMENT / PORRITT

1 commitment was obtained from PIF, and no one wrote down a  
2 single word to record it. \$60 billion.

3 To put that in some perspective, that's equivalent to the  
4 economies, the entire economies of countries El Salvador,  
5 Nicaragua and Honduras put together, equal about \$60 billion.  
6 A sum of money that if you earned \$100 a day, it would take you  
7 over 1.5 million years to earn \$60 billion. That is the sum  
8 that we are talking about.

9 And Elon Musk said he secured that in a 45-minute meeting  
10 with people he's met five times before, without anything being  
11 written down. Does that sound even remotely credible?

12 Now, Elon -- because they didn't have any notes, Elon and  
13 Deepak Ahuja and Sam Teller testified of their recollection of  
14 this meeting, which happened over four years ago. And we all  
15 know, memories fade, memories change. Sometimes we substitute  
16 what we wished happened for what actually happened. And that  
17 can happen when you are facing government investigations and  
18 lawsuits for billions of dollars.

19 But you don't have to rely on the faded and unreliable  
20 memories of Elon Musk, Deepak Ahuja and Sam Teller form what  
21 occurred at that meeting. Because someone did keep notes. And  
22 someone did write about the meeting at the time.

23 (Document displayed)

24 **MR. PORRITT:** And that person was Yasir, and his other  
25 members of his team at PIF. These documents, you've seen them

## CLOSING ARGUMENT / PORRITT

1 during the course of this trial. The documents do not lie.  
2 Documents speak from the past clearly and unchangeably. And  
3 these documents tell a consistent story about the status of  
4 discussions in August, 2018, between Elon and PIF. And they  
5 show that funding was nowhere near being secured.

6 Here are the minutes taken by the Saudi PIF at the  
7 meeting. Agreed actions. Elon to provide a plan and the  
8 financial calculations to take Tesla private.

9 There is absolutely no reference, none, to billions of  
10 dollars of financing being committed by the PIF at this  
11 meeting.

12 The final comment (As read):

13 "I would like to listen to your plan, Elon,  
14 and what are the financial calculations to  
15 take it private...if I do not hear from you  
16 next week, I will call you."

17 That's exactly the same message that Sam Teller heard at  
18 the end of the meeting as well.

19 The PIF was interested, but this was just a potential  
20 transaction for them. As far as PIF was concerned, the  
21 conversation was just beginning. Nothing was concluded.  
22 Nothing committed or secured.

23 As both Mr. Durban and Mr. Dees testified, there's a big  
24 difference between a statement of interest and committed  
25 funding. Committed and secured funding counts when make --

## CLOSING ARGUMENT / PORRITT

1 doing a going-private transaction; available funding or  
2 interested funding doesn't.

3 Then we go forward ten days to August 10th.

4 (Document displayed)

5 **MR. PORRITT:** One point to note: Elon Musk had not  
6 even spoken to the PIF again after the July 31st meeting.

7 Once again, how credible is it that you can commit -- get  
8 an undocumented commitment of 60 billion, up to 60 billion of  
9 financing at a meeting, and then you never follow up for ten  
10 days? Not even a phone call.

11 But Saudi PIF, not hearing from Elon Musk, sends him a  
12 nondisclosure agreement. Again, this was described by  
13 Professor Subramanian as a standard step at the beginning of  
14 exploring a transaction.

15 How does the agreement describe the relationship between  
16 Saudi PIF and Elon Musk and Tesla? "A potential project."  
17 That's not committed financing. That is not secured financing.

18 And what does Elon Musk, when he sees this description,  
19 do?

20 (Document displayed)

21 **MR. PORRITT:** Does he try and change it? Does he edit  
22 it to say committed financing or secured financing? No, he  
23 doesn't. He signs on the bottom, on the dotted the line.

24 (Document displayed)

25 **MR. PORRITT:** He signs up to the idea that it's a

## CLOSING ARGUMENT / PORRITT

1 potential project. That's the only document he actually signed  
2 with the PIF, describing it as a potential transaction.

3 (Document displayed)

4 **MR. PORRITT:** And then later on he gets into an  
5 argument with Yasir on the text messages that you saw. There's  
6 some media reporting that he disagrees with.

7 And at this stage, August 10th, Elon Musk is being  
8 investigated by the SEC, and being sued by investors. He  
9 desperately needs something from PIF to cover up his lie about  
10 funding being secured. He's being exposed.

11 So he threatens PIF: Confirm my lie or I will never speak  
12 to you again.

13 This is a fund which had just bought nearly 5 percent of  
14 Tesla, who obviously believe in Tesla and Elon. This is the  
15 sort of investor that Elon claims to care about, and he  
16 threatens them, that -- unless they repeat his lie about  
17 "Funding secured."

18 What sort of person does that? Not someone who cares  
19 about his investors, whether they're large or whether they're  
20 small.

21 But Yasir won't be bullied. He actually speaks the truth  
22 to Elon, a rarity in this case, it appears. He claims --  
23 calmly states that PIF had only started exploring investing in  
24 Tesla, and that PIF and Tesla need to start working together.  
25 Once again, completely consistent. A potential transaction.

## CLOSING ARGUMENT / PORRITT

1 And it continues over the weekend of August 11th and 12th.  
2 We saw these.

3 (Document displayed)

4 **MR. PORRITT:** PIF is asking for information.  
5 Information that they needed to even evaluate the  
6 information -- the transaction. And that Elon had promised to  
7 give them.

8 "We cannot approve something that we don't  
9 have sufficient information on."

10 That seems like common sense to me, but apparently not to  
11 Elon Musk. Elon Musk apparently thinks it's easier to obtain  
12 billions of dollars of financing than it is to get an auto loan  
13 or a mortgage.

14 Remember my exchange with Elon Musk. He compared this  
15 funding to a going-private transaction, to getting a mortgage.  
16 And when I pointed out that I needed paperwork and a committed  
17 financing before I can make an offer to buy a house, he then  
18 just completely turned around and said: You know what, this is  
19 nothing like buying a house after all. That exchange shows  
20 Elon's looseness with language and loose relationship with  
21 truth.

22 Nonetheless, throughout this exchange, going back to the  
23 PIF minutes, Yasir was completely consistent. Potential  
24 transaction; please give us information. None of it is  
25 consistent with committing -- committed or secured funding for

## CLOSING ARGUMENT / PORRITT

1 a 60 billion-dollar deal.

2 (Document displayed)

3 **MR. PORRITT:** Even in their recollections, Elon,  
4 Deepak Ahuja, Sam Teller, all remember there was no funding  
5 agreement signed in writing with the PIF. No amount of funding  
6 was discussed or agreed. The structure of a going-private  
7 transaction was not even understood at the time, let alone  
8 discussed, and the price at which Tesla might go private was  
9 not discussed. Any one of those elements could affect the  
10 amount needed for financing by billions of dollars. And not  
11 one was even discussed with PIF, let alone agreed upon.

12 And as we know from Elon's bankers, particularly Egon  
13 Durban, funding was far from secured. Egon Durban, Egon Durban  
14 finally began to work -- agreed to work with Elon Musk, spent  
15 several weeks of his life trying to raise up to 50 billion in  
16 capital. You saw the texts between him and his team. Working  
17 late at night trying to raise money. Would they do that if  
18 funding was secured? Would that be necessary? Of course it  
19 wouldn't.

20 So the evidence is clear. On August 7th, which is when he  
21 tests the materiality of a false statement, when it was made,  
22 the actual state of affairs is that PIF had explained an  
23 interest in a potential transaction, but that funding was not  
24 secured.

25 And remember that when I showed Elon the text from Yasir



## CLOSING ARGUMENT / PORRITT

1 that we've just have been looking at, he accused Yasir of  
2 backpedaling and ass-covering. Elon Musk's words.

3 (Document displayed)

4 **MR. PORRITT:** Well, if the other side is -- can  
5 backpedal, doesn't that mean that funding is not secured? And  
6 the only backpedaling and ass-covering I saw in that exchange  
7 came from Elon, not Yasir and the PIF.

8 And if we turn now to Exhibit 13, the second statement.

9 (Document displayed)

10 **MR. PORRITT:** Once again, the Court has instructed you  
11 to assume that this is false, and to assume that Elon Musk made  
12 this tweet with reckless disregard to its truth.

13 This is a very important statement that has been a little  
14 bit overshadowed in this trial. It was this statement that  
15 convinced Ryan Brinkman to issue his report raising his target  
16 price. It convinced Ryan Brinkman, you recall his testimony,  
17 that the "Funding secured" tweet was real.

18 Remember, the stock price went up immediately after the  
19 trading halt when this statement was issued.

20 (Document displayed)

21 **MR. PORRITT:** You can see the spike on the right  
22 following this tweet. But you've heard less about this false  
23 statement. And that is because defendants simply have no  
24 explanation or excuse for it. They would just want to bury it.  
25 Because the statement is categorical, "Investor support is

## CLOSING ARGUMENT / PORRITT

1 confirmed." That's a factual statement which was false. There  
2 was nothing ambiguous about it.

3 It is undisputed at this time, Elon Musk had spoken to one  
4 investor. PIF. And as we've seen, they were still awaiting  
5 information before they could even evaluate the deal, let alone  
6 confirm their support. Elon had not spoken to a single other  
7 investor. Not an existing investor in Tesla or a potential  
8 investor.

9 And on August -- back on August 3rd, Elon had named a list  
10 of investors he expected to support the transaction. He named  
11 the Emirates, Fidelity, Baillie Gifford, Norwegian Investment  
12 Fund, Tencent, T. Rowe Price. He threw out this list of  
13 investors to his board. He hadn't spoken to any of them. Not  
14 on August 3rd, and he hadn't spoken to them by August 7th when  
15 he tweeted out "investor support is confirmed."

16 And this was critical for the transaction. Elon Musk  
17 needed investors to roll into a private Tesla, otherwise he  
18 wouldn't be able to -- he wouldn't have secured financing for  
19 any of it.

20 And this is another reason why defendants have not  
21 discussed this tweet very much. Because when Elon did speak to  
22 investors, their response was clear, most of them did not  
23 support going private.

24 So Elon Musk announces on August 7th that he has confirmed  
25 investor support -- past tense -- for a going-private

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1 transaction, without actually speaking to anyone to confirm  
2 support. And then he pulls the transaction two weeks later  
3 when he finally speaks to them and finds out they don't  
4 support. Meanwhile, Tesla's stock price has crashed, and  
5 investors have lost \$12 billion in damages.

6 Let's go back to Instruction No. 8 on what a material  
7 misrepresentation is.

8 (Document displayed)

9 **MR. PORRITT:** You see the definition there in front of  
10 you.

11 I don't know if you could find a clearer example of a  
12 misrepresentation giving a reasonable investor the impression  
13 of a state of affairs that differs in a material way from one  
14 that actually exists than Elon's tweets that investor support  
15 is confirmed on August 7th when he has not spoken to a single  
16 investor, has not confirmed support, and investors do not, in  
17 fact, support the transaction.

18 Now, you also have to decide whether Tesla is liable for  
19 these August 7th tweets. The critical fact you should remember  
20 in making this determination is that Tesla consciously chose to  
21 make Elon its public image, and specifically his Twitter feed  
22 as the primary news and information source for Tesla. That is  
23 their choice.

24 (Document displayed)

25 **MR. PORRITT:** So when Elon tweets about Tesla, people

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1 listen. And they're treated as statements from the company, as  
2 well as from Elon Musk. Elon Musk admitted as much in his  
3 testimony.

4 And you saw with Ryan Brinkman in his August 8th report,  
5 he stated: Tesla's CEO says funding is secured.

6 (Document displayed)

7 **MR. PORRITT:** And also remember that the second  
8 indisputably false statement, the "Investor support is  
9 confirmed" tweet, contains within it a link to Tesla's own blog  
10 post that was drafted by Tesla employees for Elon.

11 Now I want to turn briefly to the verdict form, which is  
12 the task you will be facing to fill out in a few hours, or in  
13 an hour or so.

14 The first question you are asked is whether plaintiff has  
15 proved the Rule 10b-5 claim against Elon Musk for the "Funding  
16 secured" and "Investor support is confirmed" tweets. Let's  
17 look at the elements that you will be asked to find, or to  
18 consider.

19 See the first element is a material false statement. The  
20 Court has instructed you to treat both the statements, "Funding  
21 secured" and "Investor support is confirmed" as false. And we  
22 just discussed the evidence is overwhelming that they were  
23 material to reasonable investors. The first element is clearly  
24 met.

25 The second element is state of mind. Or scienter. And

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1 the Court has instructed you to accept that Elon Musk acted  
2 with reckless disregard to the truth of both these tweets,  
3 which is sufficient to meet the state of mind for this element.  
4 You are to assume this element is met.

5 The third element is the use of interstate commerce.  
6 Using Twitter satisfies this element, and it's not an issue  
7 between the parties. You have not heard about much of it --  
8 heard about that during the trial.

9 The fourth element is reliance. Now, you heard both Glen  
10 Littleton and Tim Fries read the August 7th tweet saying  
11 funding is secured, and bought or sold Tesla stock or options  
12 in response; that is undisputed by defendants. So this element  
13 is met for Glen Littleton and Tim Fries. They knew, they had  
14 read the tweets before making their transactions.

15 And for the broader class, the Court explained they are  
16 presumed to rely on public statements about Tesla, such as  
17 Elon's August 7th tweets, if Tesla stock or options traded in  
18 an open and efficient market. And Dr. Hartzmark testified that  
19 he analyzed the market for Tesla stock and options from  
20 August 7th to August 17th, and found they did trade on an  
21 incredibly efficient market.

22 (Document displayed)

23 **MR. PORRITT:** And Tesla has offered no testimony,  
24 expert or otherwise, to the contrary.

25 And the final element is whether the August 7th "Funding

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1 secured" and "Investor support" tweets caused plaintiff and  
2 other Tesla investors to suffer damages.

3 (Documents displayed)

4 **MR. PORRITT:** And here we go to the testimony you've  
5 heard this week from Professor Heston and Dr. Hartzmark. Very  
6 technical and dense testimony; a lot of information, a lot of  
7 charts.

8 I appreciate your patience in listening to it. And I  
9 could tell you were paying it the attention it deserves.  
10 Because it's critical that if Elon Musk and Tesla are going to  
11 be held accountable for the false tweets and the harm they  
12 caused to investors, that the full amount of that harm is  
13 awarded as damages. And that is your job as this jury.

14 And Dr. Hartzmark, assisted by Professor Heston, measured  
15 that harm through painstaking analysis, minute by minute,  
16 document by document, through over 2,400 articles, over 50  
17 analyst reports. We could only show a few of the documents to  
18 you during his testimony because otherwise we'd still be going,  
19 because that's the extent of the work that he did. And he  
20 explained the work he did and the reasons for his opinions.  
21 And it showed what a reasonable, robust, and even conservative  
22 approach he took to calculating damages in this case.

23 And Dr. Hartzmark is your best and only guide. Defendants  
24 did not offer a single expert in this case. That, alone,  
25 should give you confidence to accept Dr. Hartzmark's analysis

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1 and calculations. No expert would take the stand to argue  
2 against it.

3 **MR. SPIRO:** Uh --

4 **MR. PORRITT:** You had some cross-examination by  
5 defendants' lawyers, but no actual testimony disagreeing with  
6 anything either Professor Heston or Dr. Hartzmark said.

7 And so what did Professor Heston and Dr. Hartzmark tell  
8 you? It's really two things. The first is that the August 7th  
9 tweets had immediate an impact on Tesla's stock and option  
10 prices on August 7th, and this lasted until about August 17th,  
11 and that impact cost billions of dollars.

12 And the second thing from Dr. Hartzmark was a precise  
13 measurement -- see it to my right here -- of the harms suffered  
14 by investors on each day of the class period.

15 (Document displayed)

16 **MR. PORRITT:** Now, I'm going to try and summarize that  
17 as best I can, that technical evidence.

18 On the causation, look at my chart to the left here. This  
19 is loss causation shown on one chart. You see the date of the  
20 tweet and the immediate increase in Tesla's stock price, the  
21 blue line. And you see a drop in the red line. That is what  
22 Professor Heston and Dr. Hartzmark referred to as volatility,  
23 implied volatility from Tesla's stock options.

24 Now, this is not an imaginary or made-up number. This is  
25 a number that is calculated from actual transactions in Tesla's

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1 stock options during the class period. Indeed, Professor  
2 Heston explained that implied volatility is often used instead  
3 of price, instead of dollars and cents in pricings options. So  
4 one way implied volatility is important is that it acts as a  
5 price for options.

6 The second way that it is important is that it measures  
7 the amount of movement expected by the market in Tesla's stock  
8 price. Think about that as the temperature of Tesla's stock  
9 price. Just as atoms moving more quickly increase the  
10 temperature of a substance, so stock prices moving more quickly  
11 increase the volatility of a stock. High volatility or hot  
12 prices increase value of options; low volatility or cold prices  
13 decrease the value of options.

14 And Professor Heston explained that normally volatility  
15 does not move in response to changes in stock prices. Stock  
16 prices go up and down all the time; volatility generally is  
17 stable. It's only when the expected amount of change increases  
18 or decreases you see a movement in implied volatility.

19 So after August 7th you see an immediate drop in  
20 volatility. As Professor Heston explained, that was very  
21 unusual. Now volatility and stock prices are moving together.  
22 Stock price is going up, volatility's going down, but you can  
23 see what a mirror image they are of each other.

24 (Document displayed)

25 **MR. PORRITT:** The August 7th tweets were like an ice



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1 cube dropped in a glass of water, they immediately reduced its  
2 temperature. And you see over the course of the class period,  
3 to August 17th, that the impact of the August 7th tweets, the  
4 ice cube, gradually melts away. It's not a straight line but  
5 the movement is slowly up while the stock price comes down.

6 Finally, on August 17th the ice cube completely melts.  
7 Volatility goes back to where it started from. The glass of  
8 water is back at room temperature, and the stock price has gone  
9 down to \$305. This chart demonstrates that the August 7th  
10 tweets caused losses to the investors.

11 Not only do you see these price movements, but  
12 Dr. Hartzmark carefully examined all the news that entered the  
13 market about Tesla during this period. Of the 2,400 news  
14 articles, only 12 or 14 talked about other topics. And that  
15 was mostly old news, or positive news for Tesla. All the  
16 negative new information related to the tweets, either about  
17 the going-private transaction, itself, its funding, investor  
18 support, are what Dr. Hartzmark called "consequential harm."  
19 And the consequential harm, as Dr. Hartzmark explained, is  
20 real, out-of-pocket losses to investors.

21 When the market learns that a CEO lies about his public  
22 company, as Elon Musk did here, there are known negative  
23 consequences to that company's stock price that are caused by  
24 those lies. A loss of credibility for management in the  
25 future. A so-called "liar's discount." No one is going to

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1 believe that CEO in the future, which harms the company. It  
2 means the market has learned that a company's internal  
3 controls, the controls that are meant to ensure it only issues  
4 accurate information, do not work.

5 And as Professor Subramanian explained, these are very  
6 important for public companies. And it means the company and  
7 its management are going to face legal, regulatory risks,  
8 lawsuits, government investigations, with all the expense,  
9 distraction that requires.

10 All of these happened with Tesla, and resulted in its  
11 stock price dropping by August 17th to \$305.50, well below what  
12 it started out at August 6th at \$356. And this is a real harm  
13 to Tesla investors, and it is a direct consequence of Elon's  
14 August 7th tweets.

15 And if you look here, you can see we've also indicated on  
16 the chart on my left here, we've chosen the Ryan Brinkman  
17 reports and comments. You see all -- we've discussed the  
18 comments immediately after the August 7th tweets.

19 We now go forward to the August 13th and the blog post by  
20 Elon. We've heard a bit about that during the trial. Again,  
21 this is written for him by Tesla. Defendants argue that this  
22 blog post completely cleared up any misleading information from  
23 the August 7th tweets. The evidence is otherwise.

24 First, look at the volatility. Goes down, and is still  
25 much lower than what it was -- than it was on August 6th, and

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1 what it will be on August 17th. Ten percent lower. Forty  
2 percent versus 50 percent. That shows that the August 7th  
3 tweets were still having a big impact on Tesla's stock price  
4 and option prices, even after August 13th.

5 And second, you can look at the August 13th blog post,  
6 itself, and compare it to both the August 7th tweets and the  
7 actual state of affairs. On "Funding secured," the blog post  
8 still identified Saudi PIF as the reason for the "Funding  
9 secured" comment. It doesn't state that they are only  
10 interested in a potential transaction. It doesn't state that  
11 Elon was threatening and bullying Yasir one day over -- earlier  
12 over the weekend.

13 And we know what the Saudi PIF thought about the blog  
14 post, because Yasir texted Elon almost immediately afterwards,  
15 describing it as an ill-advised blog with loose information.  
16 So the other side of the July 31 meeting immediately  
17 disagreeing with Elon's description of the meeting in the  
18 August 7th blog post. Of course, the market didn't know that;  
19 that was just between Elon and Yasir.

20 And Elon, in the August 13th blog post, also said about  
21 investor support being confirmed and said that there was 66 --  
22 his estimate of 66 percent chance, or 66 percent of investors  
23 would roll over. Again, it must be read in the context of his  
24 prior comment that investor support was confirmed.

25 Once again, Ryan Brinkman captures where the market was

## CLOSING ARGUMENT / PORRITT

1 after the August 13th blog post.

2 (Document displayed)

3 **MR. PORRITT:** We didn't know what to believe, he says.

4 Now, defendants point to the fact that Tesla's stock price  
5 went up slightly after the blog post. But that is entirely  
6 consistent with the blog post being understood as confirming  
7 the August 7th tweets, saying "Funding secured," and "Investor  
8 support is confirmed." Statements you have been instructed to  
9 assume are false.

10 And then, finally, we get to the *New York Times* article on  
11 August 16th. Once again, the volatility tells the story, on my  
12 chart on the left here. Goes back up to where it had been  
13 before the tweets. The impact of the tweets on option and  
14 stock prices is over.

15 And Elon -- Ryan Brinkman remembers reading the *New York*  
16 *Times* article, and then decides to issue another note, getting  
17 permission from his -- from his -- from within JP Morgan,  
18 adjusting his target price back down to what it was before the  
19 tweets.

20 (Document displayed)

21 **MR. PORRITT:** For Brinkman, just like the market, the  
22 impact of the tweets is over.

23 And again, we've heard from defendants that this stock  
24 price reaction was really in the context of Elon's mental  
25 health or work stress. But Dr. Hartzmark carefully analyzed

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1 all the information in the *New York Times* article that related  
2 to the transaction and the other news, and found that the other  
3 news was either old, previously reported news, or was positive  
4 for Tesla.

5 The mental health, there had been a whole story in the  
6 same newspaper, *New York Times*, a day earlier, devoted to Elon  
7 Musk's mental health. It wasn't -- nothing was new being  
8 reported on the -- regards to his mental health on August 16th.  
9 And the same about his stress at work. That had been in the  
10 news throughout the summer of August -- of 2018.

11 What moved the market is what moved Ryan Brinkman to  
12 revise his price target: That the representations made on  
13 August 7th about "Funding secured" and investor support were  
14 not true.

15 So, back to the verdict form. I'm sorry, we had a bit of  
16 diversion. What we have been discussing establishes that the  
17 August 7th tweets caused Glen Littleton and other members of  
18 the class to suffer damages.

19 (Document displayed)

20 **MR. PORRITT:** That, combined with the false statement  
21 and scienter and materiality, is enough to establish liability  
22 for Elon Musk.

23 And on the verdict form you should tick yes to Question  
24 A-1 and Question A-3.

25 And as we discussed, Tesla should also be liable for

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1   Elon's Musk -- for Elon's tweet, and you should tick yes on  
2   questions A-2 and A-4.

3           And you will then turn to the amount of damages to be  
4   awarded to all the Tesla investors who were harmed. And you've  
5   got three categories to deal with. Again, Dr. Hartzmark is  
6   your only and best guide on these numbers. He offered a  
7   detailed and rigorous calculation that you can rely on.

8           And first, looking at purchases of Tesla stock by Tim  
9   Fries.

10          (Document displayed)

11           **MR. PORRITT:** Tesla's stock price was inflated after  
12   the tweets on August 7th, and it remained inflated all the way  
13   until it went to zero on August 17th. And Dr. Hartzmark  
14   calculated that amount and removed other market effects that  
15   might impact the stock price. And that generated a price,  
16   312.90, that was what he called the "but-for price," and  
17   enabled him to calculate to the penny the amount of artificial  
18   inflation.

19           Quite logically, it starts off at its highest after the  
20   tweets at 66.67 on August 7th, and reduces to zero. Defendants  
21   again did not offer any alternative to those numbers. 66.67  
22   and zero at the end. They did criticize, in examining  
23   Dr. Hartzmark, some of the intervening numbers. And  
24   Dr. Hartzmark conceded that under their -- applying their  
25   methodology, you would have to adjust the numbers in this

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1 chart.

2 But using defendants' numbers would increase damages. It  
3 would mean that inflation was higher on those intervening days.  
4 Dr. Hartzmark chose a conservative -- the smaller measure to  
5 make sure that -- to avoid any question of over-recovery.

6 It is bizarre the defendants are proposing increased  
7 damages. And of course, that's not what they're doing.  
8 They're trying to confuse you. They're trying to make you  
9 think that Dr. Hartzmark's analysis was not reliable, or that  
10 no calculation at all is possible, so therefore Elon Musk just  
11 gets scot-free because it's all too complicated.

12 Do not let them confuse you. You heard Dr. Hartzmark.  
13 You can assess his credibility. You heard about the massive  
14 amount of work he did, and how he chose this conservative  
15 measure of damages.

16 When it comes to answering question B-1 on the verdict  
17 form, you can rely on these numbers prepared by Dr. Hartzmark.  
18 And you can assess how much of that \$66.67 inflation he  
19 measured on August 7th was present each day of the class  
20 period. Your numbers could be the same, or you can reach your  
21 own calculations, based on the evidence.

22 But remember, defendants have not offered any alternative  
23 calculations. He showed these calculations on his Slide 11 --  
24 that's what you have on the screens in front of you -- during  
25 his testimony.

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1 If you need assistance, not to memorize -- it's not a  
2 memory test -- you can ask the Court to provide -- you can  
3 request the Court to provide you with a readback which may  
4 include this Slide 11. I ask you to remember the Slide 11 when  
5 you are filling in Question B-1.

6 Question B-2, this is going to ask you to fill in the  
7 implied volatilities for stock options.

8 (Document displayed)

9 **MR. PORRITT:** And this is a bit of a daunting chart.

10 If we can go to the next slide, Derek?

11 (Document displayed)

12 **MR. PORRITT:** It's a lot of numbers. But again,  
13 Dr. Hartzmark provided his help to you by providing this chart  
14 on his Slide 24 during his testimony.

15 And again, defendants do not offer any alternative. They  
16 did not even cross-examine Dr. Hartzmark about it. These  
17 numbers are essentially uncontested.

18 And you will see at the bottom half below the green line  
19 there, those numbers are the same across the entire period.  
20 It's one number. That's really just nine numbers you have to  
21 choose. For the ones above the green line, sort of the shorter  
22 term, it varies day by day.

23 But again, if you need assistance you can ask for the  
24 testimony of Dr. Hartzmark with this slide to be read back to  
25 you.



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1 And then finally on Question B-3 and the convertible  
2 bonds.

3 (Document displayed)

4 **MR. PORRITT:** This is very similar to the stock.  
5 If you go to the next slide, Derek.

6 (Document displayed)

7 **MR. PORRITT:** Dr. Hartzmark calculated the amount of  
8 inflation. And there again, no alternative figures from  
9 defendants.

10 And you can ask the Court to provide you with this slide,  
11 Slide 12, with a readback of Dr. Hartzmark's testimony  
12 explaining it. And rely on this calculation, these -- this  
13 chart when filling in Question B-3 on that form.

14 (Document displayed)

15 **MR. PORRITT:** And the next section of the verdict form  
16 talks about the board of directors. Section 20(a) Liability.

17 (Document displayed)

18 **MR. PORRITT:** Let's talk about the board of directors.  
19 They utterly failed here. They said they had a disclosure  
20 policy in place, but didn't follow it. Musk was allowed to do  
21 whatever he pleased. The only person who pushed back on him  
22 was really Yasir, in the text.

23 They had numerous warnings about the problems for Tesla as  
24 a result of Elon Musk's Twitter habit. In May, 2018, Elon  
25 publicly attacked investors -- attacked analysts, rather,

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1 during a conference call. Martin Viecha called that a red  
2 flag. And it caused Tesla's stock price to decline.

3 Two months later, Elon embroiled Tesla in a totally  
4 unnecessary dispute when he called a Thai cave diver a  
5 pedophile. Musk was warned after this, not by his board but by  
6 one of his most respected investors, Ron Baron, saying: You  
7 know what, get an ice cream cone. Just don't tweet.

8 (Document displayed)

9 **MR. PORRITT:** The board did nothing. The lack of  
10 guardrails about Musk's Twitter which, again, was identified  
11 and deliberately chosen as the main way to communicate by  
12 Tesla, gives rise, in light of these red flags, gives rise to  
13 liability. Remember, Professor Subramanian described it as an  
14 egregious corporate governance breach.

15 (Document displayed)

16 **MR. PORRITT:** So the form looks -- Tesla's directors,  
17 they had the power to control statements being made on behalf  
18 of Tesla, they had the obligation to control those statements,  
19 and they didn't. You should tick, in response to Section C,  
20 you should tick yes.

21 (Document displayed)

22 **MR. PORRITT:** And they have the burden to prove the  
23 good faith defense. And I don't think you have heard anything,  
24 as I've described, that would meet the definition fairly of  
25 good faith.

## CLOSING ARGUMENT / PORRITT

1 (Document displayed)

2 **MR. PORRITT:** And then finally there's a question on  
3 proportionate liability. You must decide which of the  
4 defendants committed a knowing violation of the federal  
5 securities laws. This is the only question that requires you  
6 to decide whether a knowing violation occurred. You do not  
7 need to make that determination when deciding liability in  
8 Question A of the verdict form.

9 (Document displayed)

10 **MR. PORRITT:** And finally, for those you've found  
11 liable, you need to allocate a percentage. You should assign a  
12 percentage of liability as you see fit. And that should add up  
13 to 100 percent.

14 Before I sit down, there are a few things defendants are  
15 going to say. They presented many different themes,  
16 explanations, and narratives throughout the trial. Talked  
17 about shorthand, throw-away, literally mathematically not the  
18 correct word, backpedaling. They even told you that Elon sent  
19 the tweets in a split-second decision. They told you that,  
20 even though Elon Musk had over an hour, an hour and a half, to  
21 think about how he was going to respond supposedly to this  
22 *Financial Times* story.

23 This is not a split-second decision. This was not  
24 swerving to avoid a pedestrian in the street. This is not  
25 running to catch a child before they fall off their chair onto

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1 the floor.

2 (Document displayed)

3 **MR. PORRITT:** This is someone sitting on the tarmac of  
4 an airport before catching their corporate jet, deciding,  
5 choosing to send out that tweet.

6 As I said at the beginning, the United States securities  
7 market is the largest securities market in the world. Second  
8 to none, in terms of not only sheer size and scope, but access  
9 and regulation. It allows people around the world to invest  
10 and save for their futures. But, it depends on rules. The  
11 rules state information disclosed by people like Elon Musk must  
12 be accurate, truthful.

13 The tweets you have seen here were not truthful. And  
14 you've heard testimony from Glen Littleton and Tim Fries during  
15 this trial. They were just two investors who suffered damages  
16 as a result of Mr. Musk's erratic, reckless tweets. There are  
17 thousands more in the class -- we can't bring them all here  
18 today, the courthouse couldn't contain them all -- who suffered  
19 just like them.

20 Just like Mr. Littleton, in a blink of an eye, at risk of  
21 losing their entire life savings. Or like Mr. Fries who has  
22 three kids in college, where every dollar counts when paying  
23 for college tuition.

24 And I asked Mr. Musk whether he regretted the harm he  
25 caused to Mr. Littleton and Mr. Fries. And you heard what he

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1 said. He just said "No."

2 Although he claimed to care for the small investor, when  
3 asked what small investors he cared about, he pointed to Cathie  
4 Wood, who is a hedge fund manager who manages \$14 billion.  
5 That's not a small investor.

6 The sort kind of conduct you have seen here today from  
7 Elon Musk is not acceptable. It's illegal. And if you don't  
8 hold him accountable, it sends a message that we, as a people,  
9 as ordinary investors, are okay with that. That our savings  
10 are not as important as his, even though we are the ones that  
11 suffer most. The market crash, and economies decline.

12 I said in my opening, and I've repeated again today, this  
13 is a simple case. Two critical facts necessary for liability,  
14 falsity and scienter, you have been instructed to accept as  
15 established by plaintiff. The remaining elements, especially  
16 materiality, established well beyond the 51 percent probability  
17 that we are required to show in a civil case. And a lot of  
18 that evidence comes from our experts, plaintiffs' experts, and  
19 was uncontested.

20 So I ask you on behalf of Glen Littleton, the class, to  
21 find Elon Musk and Tesla and his board liable, and award the  
22 full damages caused by their fraudulent conduct.

23 Thank you very much.

24 **THE COURT:** All right. Thank you, Mr. Porritt.

25 Mr. Spiro?

**CLOSING ARGUMENT / SPIRO****CLOSING ARGUMENT****BY MR. SPIRO**

Okay. I think I heard plaintiffs say that you should assume Elon Musk committed fraud. Well, he didn't. Not even close. Elon Musk was considering taking Tesla private, and he could have. Funding was not an issue. That is the fundamental proof and truth which will never change.

There's no question Elon Musk thought there were compelling reasons to go private. And he was actively pursuing going private. He was going through the process. He knew funding was secured. The PIF told him they would go forward. He thought funding was not going to be a problem for many other reasons, including that it had never been a problem.

Investors clamored for the opportunity to invest with Elon Musk. And of course, he had his own wealth to finance a going-private.

He wrote two words, "Funding secured," that were technically inaccurate. He published a blog post that same date and those same tweets, provided further detail of what that meant, just a few days later. August 13th. And the investment public, when they saw that, they didn't bat an eye. Stock went up.

The *New York Times* article that is essential to their entire case, which they never showed to you, did not reveal anything the public did not know on August 13th about funding.

## CLOSING ARGUMENT / SPIRO

1       The headline wasn't about funding. It was about  
2       Mr. Musk's mental state. Tesla was Elon Musk. If his mental  
3       state is suffering, if he cannot go forward, that scares  
4       shareholders. And the stock took a hit because of that.

5       And they desperately strived to capture and claim this was  
6       all about "Funding secured" when, in fact, the articles, the  
7       articles that came out after, the focus, it wasn't on that at  
8       all. The market already knew days earlier what the state of  
9       funding was from the August 13th blog post.

10       If the stock went down on the 17th for reasons other than  
11       that one line they keep showing you, that the reporter says  
12       "Funding far from secured," their case is over.

13       And lack of funding did not prevent this from going  
14       forward. Funding was never the issue. What prevented it from  
15       going forward was the very thing Mr. Musk identified on  
16       August 7th in those tweets. That the shareholders wanted to  
17       stay public. That was his motive, to do what was right for the  
18       shareholders.

19       And plaintiffs can talk about whatever they want, all they  
20       want, but they never showed you an ulterior motive he possibly  
21       had. This was always for the shareholders.

22       And, you know, they got up in their opening statement a  
23       couple of weeks ago and they said the same thing. You know:  
24       Elon Musk lied, he committed fraud. And then they went and  
25       they attacked, if you remember, that August 2nd email. Has to

## CLOSING ARGUMENT / SPIRO

1 be a fake email. They called that email all those names, that  
2 proposal to the board, they called it all those names. Because  
3 if that email is real, they lose. If that email is real, then  
4 it's a real proposal, and it's more than a mere consideration.  
5 The email can't be real for them. Because if it is, while the  
6 state of affairs as disclosed, as detailed and accurate, is no  
7 different in any way from what the market took from those  
8 initial tweets.

9 They hate the blog posts. They don't ever want to talk  
10 about the blog posts. Actually, the blog post on the 13th,  
11 that can't be accurate for their case to work. If the blog  
12 post on August 13th is accurate, then they lose. Even though  
13 they don't claim in this case that the blog post is false. If  
14 that's the detailed state of affairs in that blog post, then  
15 when the market learned the details, the stock went up. What  
16 that means is materiality, reliance, class period, causation,  
17 their whole case, they can't prove it.

18 And if the blog post is accurate, the *New York Times* can't  
19 reveal some supposed fraud. And they don't get billions of  
20 dollars. So the blog post can't be accurate for their case to  
21 work. But they don't claim the blog post is false. They  
22 can't. It isn't. So they're stuck.

23 What can they do? If it's the truthful, accurate,  
24 detailed state of affairs, they lose. But it's not false. And  
25 they don't allege that it's false. So what do they have to do?



## CLOSING ARGUMENT / SPIRO

1 You saw in opening statements, they have to come up with a new  
2 lie. Something new in the blog post that's different from the  
3 tweets.

4 And so they stood up and they said: Look at this. You  
5 see? Two thirds of shareholders, his best estimate, two  
6 thirds, it's a lie. You see, he was lying then. This new lie  
7 keeps the fraud alive. It's different from the tweets. And if  
8 it's different from the tweets, then they can get to the *New*  
9 *York Times* article and get billions of dollars.

10 And I stood up and told you, you know, wait a second.  
11 Maybe there's another explanation here. And that's exactly  
12 what happened. They tried to draw on your emotion, so you  
13 wouldn't see the truth. They tried to hide the ball time and  
14 time again so you wouldn't see the truth. But the fundamental  
15 truth, it came out in this courtroom.

16 So this is a case, it's a class, it's -- a class is a  
17 group manufactured by lawyers. They picked the time period,  
18 they picked the witnesses. They called lead plaintiff Glen  
19 Littleton. He told you he was the reasonable investor, and  
20 greatly damaged, and that's why he wanted to lead the class.  
21 Stocks were his first love.

22 And they entered the first exhibit in the case -- I don't  
23 know if you remember this, the first exhibit they showed him.  
24 And it was an email to his broker to execute the trades.

25 (Document displayed)

## CLOSING ARGUMENT / SPIRO

1           **MR. SPIRO:** But they didn't show you the first email  
2 in the chain. Littleton heard about this "Am considering"  
3 rumor (Indicating quotation marks), something uncertain he was  
4 deciding to bet on.

5           Why did, why, when they entered the very first exhibit  
6 with him, not show you that? Because they know what it proves.  
7 It proves that even their hand-selected lead plaintiff, before  
8 the lawyers, before the billions, when he was alone with his  
9 broker, he knew this was just a consideration. A  
10 maybe/maybe-not he was gambling on.

11           And next to this is an instruction (Indicating). And I  
12 want it to say two things about legal instructions so I don't  
13 have to keep saying them. The first is the judge instructs you  
14 on the law. Not me, not him.

15           The second thing is they have the burden of proof. They  
16 have to prove every single element. I don't have the burden of  
17 proof on any of the elements I'm going to show you today. And  
18 don't forget that. In cases when the evidence of innocence is  
19 so strong, people forget that. They have the burden of proof.  
20 It doesn't shift to me.

21           And we showed you the truth. That's why we showed you  
22 this email. That's why we showed you this was all just a  
23 consideration, and everybody knew that from the start.

24           And they stood up on redirect. I want to make sure you  
25 remember this. They stood up on redirect, and the plaintiff's

## CLOSING ARGUMENT / SPIRO

1 lawyer looked at Mr. Littleton and said: That was bad word  
2 choice, that word "rumor" was bad word choice. And  
3 Mr. Littleton looked at you all and said: Yeah, that was bad  
4 word choice.

5 This whole case is built on bad word choice. I'm sitting  
6 here thinking they accused somebody of fraud, and sued him for  
7 billions of dollars over bad word choice. And the lead  
8 plaintiff at the beginning of the case looked at all of you and  
9 said: It's just bad word choice. Who cares about bad word  
10 choice?

11 And their case begins to unravel. He told you his duty to  
12 join the class and lead the class.

13 (Document displayed)

14 **MR. SPIRO:** Well, one of the cars, one of the multiple  
15 cars he wanted delivered was late, so he starts yelling at the  
16 customer service person and tells them they're joining the  
17 class.

18 Of course, he was gambling throughout the entire class  
19 period, as you learned. The 13th, the 14th, the 15th. He's  
20 betting. He has blog post amnesia. Can't remember the blog  
21 post. Didn't see it for weeks. He told you he had talking  
22 points. Somebody gave him talking points. Then he went back  
23 to his talking points.

24 Then he says: Okay, it's true, I saw the blog post. And  
25 he didn't think it had any different meaning than those initial

## CLOSING ARGUMENT / SPIRO

1 tweets. He told you what he took from that blog post was no  
2 different from the initial tweets. And he told you that,  
3 because his trading record proves he knew the detailed state of  
4 affairs.

5 And also, because of his trading records, he couldn't have  
6 possibly seen the *New York Times* story. Wouldn't have made any  
7 sense. No talking point would have worked. They didn't show  
8 him the *New York Times* story.

9 But they needed somebody else after that. So they called  
10 Timothy Fries. And he told you he was here, and he lost money,  
11 and that's unfortunate. If he had held onto his stock, he  
12 would have made many, many times his money. Many, many, many,  
13 many, many times his money.

14 So he sold. Okay. It's unfortunate. He -- he sold,  
15 though, two days after reading the tantalizing solicitation  
16 from the plaintiff's firm. He clicked on the plaintiff's link  
17 that had a suit with the class period ending August 8th, with  
18 the fraud revealed on August 8th. And this law firm was  
19 recruiting people based on that that theory of fraud, a fraud  
20 that never happened. And their theory was that the fraud was  
21 revealed the next day on the 8th.

22 As of September 5th, 2018, the case theory, the class  
23 period was still very different than it is today, when the  
24 information was fresher in everybody's minds, when the truth  
25 was ever clearer. The so-called fraud was uncovered on the

## CLOSING ARGUMENT / SPIRO

1 8th. Not only is that different, but if the original  
2 solicitation was true, it destroys the ability to prove  
3 reliance causation in their class, and they never get to that  
4 *New York Times* story and the billions.

5 And then Tim Fries, nice guy, after clicking the link, he  
6 goes about his life in 2018.

7 (Document displayed)

8 **MR. SPIRO:** And then there's 2019, he's going about  
9 his life. 2020, 2021. And he gets a call from plaintiff's  
10 counsel.

11 And I asked him: You know, after that call when you were  
12 picked, you know, did you spend many, many hours and many, many  
13 days with the plaintiff's lawyers?

14 And wouldn't you know it, five years later, he remembers  
15 like Christmas morning, the only two words that he knows from  
16 that time period are "Funding secured." Only two words he  
17 could remember. Dozen and dozens of words in those tweets,  
18 600-plus-word blog post. The only thing he remembers is two  
19 words, the talking points, "Funding secured."

20 And you start thinking: What were those prep sections  
21 like? And that's why we have the poster board that I made, you  
22 remember, with the easel, so smoothly.

23 (Document displayed)

24 **MR. SPIRO:** And I did that because I wanted you all to  
25 put yourself back in the mind of the witness half a decade ago,

## CLOSING ARGUMENT / SPIRO

1 all of the things that were really in his mind as he was making  
2 these considerations, what influenced his decision to buy.

3 He had been watching the company and Elon Musk for a  
4 while. He thought they were a worthy investment. He had all  
5 these things in his mind. And he thought the main topic  
6 sentence, --

7 (Document displayed)

8 **MR. SPIRO:** -- the main sentence in the tweet, the  
9 potential going private, that's what he thought was important,  
10 significant and material.

11 "Funding secured" was just this concept that some party  
12 had money and expressed interest. And that was undisputedly  
13 true. And now you know that that was true.

14 But here's the other thing. When the blog post of the  
15 13th comes out, and Mr. Fries is monitoring the news every day,  
16 and the world learned of the details of "Funding secured," he  
17 also didn't sell. It didn't influence him to sell. Just like  
18 it didn't influence Mr. Littleton to sell.

19 So again, Fries, same thing, blog post amnesia, didn't  
20 have it before, but he gets afflicted, and he says -- he buys  
21 on the 8th -- remember, he doesn't even buy on the 7th. He  
22 buys on the 8th, and he did not see the blog post on the 7th.  
23 And he doesn't sell on the 13th. Even though he's monitoring  
24 the news, he says he didn't see that one either.

25 And all of a sudden on cross the blog posts are finally

## CLOSING ARGUMENT / SPIRO

1 shown to the jury. You didn't get a chance to see them until  
2 cross. And Fries says: Yeah, okay maybe I did see that.

3 So again, the totality of the news on the 7th is out  
4 before he buys. And he happens, weeks after the blog post, --

5 (Document displayed)

6 **MR. SPIRO:** -- of all the days, two days after the  
7 plaintiff's solicitation, he sells. And I keep putting up this  
8 material misrepresentation instruction (Indicating). And  
9 because, again, Littleton tells you it's just a rumor, it's not  
10 important, and, and so does Mr. Fries. So in any event, I also  
11 want to show you reliance.

12 (Document displayed)

13 **MR. SPIRO:** I'm going to use a board for this. It's  
14 that important. You see the element there?

15 "Investors reasonably rely on the market as  
16 an accurate reflection of the current market  
17 value of the securities."

18 Fries told you the opposite. That's it. Game over. No  
19 other witness contradicts this. Not one. Their own witness  
20 proves under oath they didn't prove reliance.

21 And plaintiffs also didn't tell you that a major part of  
22 their class are the short sellers. You didn't learn that until  
23 the very last day of this case, on cross-examination. I was  
24 wondering if they were going to tell you that. The very people  
25 spreading falsehoods and misinformation trying to drive Tesla

## CLOSING ARGUMENT / SPIRO

1 to zero, the people that Mr. Littleton told you are bad people,  
2 they hid that from you. That's a big part of their class.

3 But, they called the professor, Guhan Subramanian, to  
4 explain how this all works. And what he tells you is that  
5 these tweets are unprecedented, unprecedented. And on cross,  
6 new tweets are finally shown to the jury. And I saw some of  
7 you reacting like: Wait a second, I thought this was one  
8 tweet, two words, and this is horrible fraud. What are these  
9 other tweets? I never saw these other tweets. Maybe this  
10 professor can explain.

11 So the professor tries to explain, and he again goes after  
12 that August 2nd email. He says: This is a horrible email.  
13 Incomprehensible, inconclusive, a bunch of other words.  
14 Because remember, the email, the proposal to the board, if it's  
15 real, they lose.

16 But, the professor, this one wasn't focused on causation  
17 and damages. He was the one to tell you that tweeting's bad.  
18 And he forgot to be prepped or wasn't prepped on damages and  
19 talking points and whatnot, so he says that the August 13th  
20 blog post revealed the fraud. That's what he said, under oath.  
21 He says nothing about the *New York Times* story.

22 None of their witnesses, the plaintiffs, the narrating  
23 professor, none of them said a word about the *New York Times*  
24 story. Not one of them. But the professor forges ahead and  
25 announces to all of you that a deal by tweet is unprecedented.



## CLOSING ARGUMENT / SPIRO

1 And that, my friends, goes into the category of: So what?

2 Elon could have gone on TV, nobody disputes that. He  
3 could have sent a letter to the board and publicized it, the  
4 very email he did send to the board. No one disputes that.

5 Often these things happen, principal to principal, with an  
6 initial bid. You know that from Goldman Sachs. You know that  
7 from your own personal experience.

8 So it's unprecedented because it's a tweet and not a  
9 different medium. And that he was trying to include the retail  
10 shareholder. The mom and pop. The little guy. And not seize  
11 more power for himself.

12 And then they called Elon Musk. The man who is somewhat  
13 unprecedented, who's actually trying to do what's best for  
14 shareholders. And the plaintiffs want you to picture some rich  
15 liar, fire-breathing dragon. "Anarchy," they just yelled out  
16 in the court, "anarchy."

17 They wanted to call him on cross-examination for days,  
18 before you heard from any other witness about the facts of what  
19 occurred, about the state of affairs, so they can try to make  
20 him out to be a liar and bad. That's what all that bad  
21 tweeting stuff is about. They're trying to condition you and  
22 distract you: Bad tweet, bad tweet, fraud tweet. Just because  
23 it's a bad tweet doesn't make it fraud.

24 Well, thank God you got to meet him, and thank God what  
25 they say is not the law. And you got to see him for three

## CLOSING ARGUMENT / SPIRO

1 days, this fire-breathing, you know, tweeting monster. But  
2 that's not who I saw.

3 Maybe that's not who you choose to see, either. Maybe you  
4 saw somebody whose childhood they can't even speak of. Maybe  
5 you saw the kid coming over here with nothing and trying to  
6 find his way. Maybe you saw the kid who was in that witness  
7 chair falsely accused of fraud, and how that has weighed on  
8 him.

9 Three days of testimony, moments of being barked at,  
10 moments of confusion and imperfect memory. But you know what  
11 the beautiful thing about witnesses that aren't coached on what  
12 to say? It's really, it's a beautiful thing. It's why we have  
13 trials. He doesn't remember the exact timing of everything.  
14 And if he remembered it perfectly, the perfect sequence that  
15 helps him, they would say: Aha, he remembers it too well.

16 They threw up that, you know, gotcha slide. You don't  
17 want to be exposed (Indicating quotation marks) with Yasir.  
18 It's like they -- pretending like that was some great  
19 confession? You all were there. That wasn't a confession.  
20 Day 2, Hour 5 of testimony, and Elon is frustrated and trying  
21 to explain, he doesn't want to be made to look like a liar when  
22 he wasn't. A point he simply explained later.

23 And he was the same with me on direct as he was with them  
24 on cross. He was not doing this  
25 question-response-question-response script.

## CLOSING ARGUMENT / SPIRO

1 I'd ask simple questions like: Don't you talk to retail  
2 shareholders on Twitter every day?

3 And he looked at me and said: Well, not every day.

4 I was like: Okay, great.

5 And he was going on detours and I tried to pull him back.  
6 That's what real witnesses look like. You just hadn't seen it  
7 before in this trial.

8 And when he couldn't remember something, and he was  
9 confused, he just kept saying: Just show me my first sworn  
10 testimony that happened weeks later. That would be freshest,  
11 that would be most accurate. Just show that.

12 But, listen. Ultimately whatever you think of him, this  
13 isn't a bad tweeter trial. It's  
14 did-they-prove-this-man-committed-fraud trial. And you know he  
15 didn't. And his testimony was completely corroborated, for  
16 three main reasons.

17 First, now that you have seen the evidence, you know that  
18 he was genuinely considering taking Tesla private and taking  
19 steps to action the plan.

20 Second, Deepak Ahuja says the same thing as does Sam  
21 Teller of what happened with the PIF and the board, Dees and  
22 Durban, what happened after.

23 And then there's the exhibits, time and time again,  
24 showing.

25 (Document displayed)

## CLOSING ARGUMENT / SPIRO

1           **MR. SPIRO:** They told you there were no notes of  
2 anything, I heard something like that. They had board minute  
3 notes. He's sending emails. The PIF's in.

4           But you don't need to rely on his testimony alone because  
5 of all of the other evidence that irrefutably corroborates it  
6 and proves the fundamental truths, that as he thought as best  
7 he could, my mind returned to where he's come from and what  
8 he's built.

9           He had a history of doing a little bit of business and  
10 fundraising before the "Am considering" tweet. And before the  
11 "Am considering" tweet, he began to take steps to action the  
12 plan. Some people say follow actions, not tweet words. Some  
13 people say you can tell the most about someone's intentions  
14 before the lights come on and the world is bearing down on  
15 them.

16           On July 31st, he meets with the PIF. Handshake deal;  
17 we're ready to act. Not written and finalized, but a handshake  
18 deal. We are ready to act. That sounds like funding's not an  
19 issue.

20           Every day from that day forward he showed his genuine  
21 intentions. He was taking steps, starting with that very first  
22 proposal they hate. And I'll tell you now why they hate it so  
23 much. Because if Elon had just published his proposal to the  
24 board, the stock would have gone up far more than the "Am  
25 considering" tweet. It was an actual proposal to the board.

## CLOSING ARGUMENT / SPIRO

1 Not just a consideration.

2 If he had just published that email, which he was  
3 unquestionably allowed to do, the stock would have gone up far  
4 more. That's case-ending for plaintiffs. Because of  
5 materiality.

6 You see the actual state of affairs going on behind the  
7 scenes that the world didn't know at the time, that you learned  
8 in this courtroom, it would have sent a signal to the market  
9 that would have been interpreted even stronger than the tweet.

10 And the proposal also clarifies, once and for all, and  
11 from the beginning, what you eventually begin to learn. He is  
12 the bidder. He is the buying party.

13 You know, this mortgage analogy, Elon tried to explain,  
14 he's offering to buy the shareholders for 420 a share. PIF was  
15 like a bank or a funding party, and said they were good for it.  
16 They had made the 4.9 percent down payment. To Elon, that's  
17 better than any contract he's ever seen. They put billions in.  
18 Actions speak louder than words.

19 So Elon puts an offer out on the house. He has the  
20 mortgage to tap on if he wants part or all of it. He knows his  
21 decades-long investors who have made gazillions off of him are  
22 going to be there. And he thinks there'll be lots of rolls.  
23 But he also has his own capital. And he has debt and bank  
24 financing if he needs it.

25 It isn't just the PIF, it's not just that he is the best

## CLOSING ARGUMENT / SPIRO

1 fundraiser ever. It's that funding wasn't possibly an issue.  
2 He had the backup of his own money.

3 This isn't something you talk about. You don't talk about  
4 securing your own money. Let me check with myself, if I might,  
5 myself be interested in also -- it doesn't make any sense.  
6 This is lawyer games. Not the real world.

7 In that email to the board, he doesn't mention the PIF.  
8 Because it's important for him to know that he has that in his  
9 pocket, that he's doubly-secured, he doesn't even mention that.  
10 They're not the bidder. He is.

11 But you know what he does mention in that email? SpaceX.  
12 SpaceX is what he was thinking about. SpaceX, where he works  
13 every day. SpaceX is very much on his mind.

14 This capital in the back of his mind gave him comfort. Of  
15 course, it would. He puts his own money in every round he's  
16 ever done. In '08 and '09 when times were tough in Twitter, he  
17 puts it in every time. Of course, the principal is allowed to  
18 put in their own money.

19 And of course, when he was immediately deposed in this  
20 case and the first question was: What was the sources of  
21 capital? Not the only source of capital but what -- he said  
22 his own money. He said it then. No one ever made an issue out  
23 of it, nobody ever questioned it. That sounds like funding is  
24 not an issue.

25 Now, Deepak Ahuja recounts the PIF meeting the next day to

## CLOSING ARGUMENT / SPIRO

1 the board. And the background of all those previous meetings  
2 with the PIF. He goes to that board meeting, alone. No Elon  
3 Musk. Just him and the board. And he told them the PIF  
4 committed. They were ready to act. And so the board knew  
5 funding wasn't an issue.

6 And remember, it was clear to Deepak that the PIF were  
7 committed to take the whole thing private. That's what Deepak  
8 told you. That's his take-away from what was said in that  
9 meeting and what it meant to him.

10 We have been talking about how actions, and actions are  
11 more important, it's said, than words. Words are just words.  
12 They have different meanings, different interpretations or  
13 meanings. You know, a tweet is a bird sound. Or it could be a  
14 tweet. The precise meanings of a word, "tweet," it doesn't  
15 matter.

16 You know what it means when you hear it in this case. And  
17 Deepak Ahuja knew that the PIF committed in that meeting. And  
18 so as they exit the meeting on that walk around the factory,  
19 Deepak said to Yasir: You know, there's lots of other funders  
20 out there. You don't need to do this alone.

21 Deepak knows. All of Elon's deals are unprecedented, and  
22 over-subscribed. So it need not be PIF doing the whole thing.

23 And you know what Yasir said? Remember that? Said:  
24 Funding's not an issue. We have enough. No need to go to  
25 other investors. We will fund the whole thing.

## CLOSING ARGUMENT / SPIRO

1 Evidence, ladies and gentlemen, doesn't come more  
2 compelling than that.

3 Deepak leaves. He goes to meet with Elon and the general  
4 counsel, and the process continues. Deepak knew funding wasn't  
5 an issue.

6 Sam Teller was there too, interacting with everybody.  
7 He's in and around the board meetings. You know, whether he  
8 has ADHD or not, he knew funding wasn't an issue. They had a  
9 handshake deal.

10 Board meeting after board meeting, board meetings with  
11 notes, lawyer after lawyer, Elon doing his homework, he's  
12 speaking to Dell and Dell's lawyer, and Egon Durban, and Dan  
13 Dees. Actions. And you want to know something? Nobody says  
14 this is impossible. Nobody says that.

15 (Document displayed)

16 **MR. SPIRO:** Nobody says this is impossible. You know  
17 what they all say? Funding's not an issue. It's dozens of  
18 people, by my count. Dozens.

19 August 4th, before the tweet:

20 "Dees told me he's convinced he doesn't need  
21 money."

22 August 6th before the tweet, Egon Durban:

23 "He has dough."

24 Everybody knew funding was not an issue. And you know,  
25 when I count them up, the dozens of people who know the most



## CLOSING ARGUMENT / SPIRO

1 about this situation, the subject matter, the facts, have the  
2 requisite expertise, the full board, in-house counsel, outside  
3 counsel, Deepak and the Tesla executives, Egon and the Silver  
4 Lake team, Dees and everybody at Goldman on those emails,  
5 nobody says this was impossible. Nobody says funding wasn't an  
6 issue -- was an issue. Nobody.

7 And guess what? Remember this. Not one of them thinks  
8 this was not genuine. Not one of them thinks Elon lied, that  
9 this was some fraud. Inside Tesla chairwoman Robyn Denholm,  
10 the type of person you jurors can count on, somebody with savvy  
11 and experience, and unmistakable character, she flew all the  
12 way from Australia to tell you if this was anything but true  
13 and genuine and pure, she would have immediately resigned. If  
14 this was fraud, she would have stood down. That's a reason,  
15 alone, to find Mr. Musk not liable.

16 And outside Tesla, Dan Dees tells you the same thing. You  
17 think he and Goldman Sachs signed that retainer letter ten days  
18 later, if they think anything improper's going on here? Of  
19 course not. And Goldman Sachs is also the banker for the PIF.  
20 Dees is the man on both sides. He sees everything. He knows  
21 there is no fraud here. That's a reason, alone, to find  
22 Mr. Musk not liable.

23 So the night before the tweets Elon is on the phone with  
24 Egon Durban, and we have contemporaneous notes, handwritten  
25 notes. I mean, it doesn't really matter so much. I don't want

## CLOSING ARGUMENT / SPIRO

1 to make this into: Meetings that don't have notes happen, and  
2 ones that do don't happen.

3 (Document displayed)

4 **MR. SPIRO:** But the person who took the notes came in  
5 here and took an oath, and testified, and was cross-examined.  
6 That's what matters. People who come into court and testify  
7 and are cross-examined. That's real evidence, credible  
8 evidence, so they can be tested on it and be cross-examined.

9 And Egon says Elon told him the 20 percent. 420 was not  
10 some spontaneous comment or some joke. You know that from the  
11 proposal of the board, 20 percent. That the Saudis were there  
12 and available.

13 And there's another thing that is very interesting about  
14 this, Elon Musk didn't ask for any money. Silver Lake  
15 Affiliates were willing to give him \$6 billion. Egon told you  
16 that. I don't know if you've ever noticed -- that's why I have  
17 my calendar -- that all those days after the PIF meeting,  
18 August 1st, 2nd, 3rd, he's going and doing all these things,  
19 all of these actions. But he's not looking for any money.

20 Do you want to know why? Because funding was never an  
21 issue.

22 Egon told you that he was really considering this. And in  
23 all candor, from Elon's perspective, this would probably be a  
24 done deal, but he cares about his retail shareholders and so he  
25 had to figure out the structure.

## CLOSING ARGUMENT / SPIRO

1 Dees and Durban, just like the PIF, had sufficient  
2 information on public filings and betting on Elon, to want to  
3 give Elon Musk \$6 billion. Like everything else, Dees and  
4 Durban, the real experts with real experience who were  
5 independent third parties here, the men who knew he was  
6 considering it, and knew his history and nothing else. They  
7 knew funding wasn't an issue before the tweets, as did every  
8 reasonable investor. They didn't know how many would roll.  
9 They had no idea.

10 (Document displayed)

11 **MR. SPIRO:** But, look, it's August 4th. I asked  
12 Mr. Dees on purpose: You hadn't spoken to Elon.

13 No.

14 All he possibly knows at this point is that he's  
15 considering the transaction, and there's a 20 percent premium,  
16 and they know who the man is. Elon Musk. Right?

17 So, basically what he knows is the first main sentence in  
18 the tweet. It's before the tweet goes out. He knows the main  
19 sentence in the tweet.

20 And do you want to know what else he knows? He doesn't  
21 need money. Funding's not an issue.

22 These real-life experts knew this. You know who else knew  
23 this? Mr. Littleton. Look at his testimony. You know who  
24 else knew he didn't need money, that funding wasn't an issue?  
25 Koney from Jennison. That videotape, he told you. And you all

## CLOSING ARGUMENT / SPIRO

1 know he didn't need money.

2 And so you can almost go back to picturing Elon, he's  
3 quietly doing homework, talking to these experts and folks, and  
4 he isn't asking for money. But he also isn't running around  
5 talking to the big shareholders. Right? And there's a reason.  
6 It's called Reg FD. It's complicated stuff. His conversations  
7 with lawyers of privilege, it's redacted in the board minutes,  
8 nothing improper, that's how this works.

9 But you know enough about Reg FD now to know that  
10 investors did not want him reaching out at that point. It  
11 would cause legal issues. And Elon Musk wanted to be careful  
12 and not cause these issues. This was a real riddle for him.

13 (Document displayed)

14 **MR. SPIRO:** He had to at some point publicly disclose  
15 his consideration. And, you know, it's a bit of an aside, but  
16 it doesn't really matter. Because if you talk to them, it  
17 would have leaked. Right?

18 And then the hypotheticals he gave them in those  
19 conversations, somebody would have taken a hypothetical, taken  
20 a word, put it under the light, filed a lawsuit. Would have  
21 solved nothing. Even if he had talked to some investors, he  
22 wasn't going to be able to talk to every investor. There was  
23 still going to be uncertainties with how many were going to  
24 roll. It would just give him a gut, a gut he already had. He  
25 was the CEO of Tesla. Elon Musk was Tesla.

## CLOSING ARGUMENT / SPIRO

1 (Document displayed)

2 **MR. SPIRO:** So the FT story breaks. This is sunrise  
3 in California that morning. And I've asked him some questions  
4 about this, and about split-second decisions.

5 And I'm glad the plaintiffs have brought that to the  
6 foreground. I was hoping that they would. And they do that  
7 because they know how damaging it is for their case. They  
8 know, because in that moment, Mr. Musk did not form some  
9 intention to deceive. They know, in that rushed state, it led  
10 to imperfect word choices.

11 When he left Durban on the phone on the 6th, they had a  
12 meeting set several days later. He wasn't intending to do  
13 this.

14 And the other reason I like it is because I get to play  
15 some word games. A split-second decision, at least to me, is  
16 not literally a decision that you have to make within  
17 milliseconds.

18 I mean, they just stood up and said the ten-day class  
19 period was a blink of an eye. I mean, that was technically  
20 inaccurate. You may get asked that kind of a question. I've  
21 been asked that question. You see it at a job interview.  
22 Maybe someone else asked you recently.

23 And what it means to most people is that it's a difficult  
24 decision you have to make under time pressure. A health  
25 decision. A decision about an emergency weather situation.

## CLOSING ARGUMENT / SPIRO

1 It's a decision you cannot wait to make. As one witness put  
2 it, it's a call on the field.

3 And Elon doesn't sit with that information. You can see  
4 in the email, he doesn't see it for an hour, right, after that  
5 initial email. He was driving and racing to the airport. He  
6 doesn't see the email. That's why he doesn't respond before he  
7 acknowledges it. It's a matter of minutes. It's how many  
8 times in his mind the PIF had approached. It's the  
9 4.9 percent, right up to the threshold, knowing they were up to  
10 something. It's not every, every little thing. It's all of it  
11 together. He knows he cannot wait.

12 And you know, we can second-guess him all we want now.  
13 Who knows what would have happened. He wanted to be the one  
14 the shareholders heard from. He wanted to make sure they knew  
15 he was considering this. He wanted to be transparent.

16 We really want a world where nobody knows his  
17 considerations? What he did sounds like the right thing to do.  
18 Egon Durban certainly thought so.

19 And the article breaks, and it's rising and rising, and  
20 the stock is rising and rising. You remember I -- to put the  
21 exhibit into evidence a few times. And you see the Saudis sort  
22 of puffing a little. You can look at the end there, about the  
23 Saudis' investments, if you look at the end of the article,  
24 they know about all their investments.

25 That's them sending 40 billion often to somebody. They

## CLOSING ARGUMENT / SPIRO

1 also's are sending up to a 20 billion-dollar commitment -- you  
2 see that, up to a 20 billion-dollar commitment? Sounds like a  
3 verbal commitment. I don't know what an "up to" commitment is,  
4 signed in writing. Sounds like a verbal commitment. That's in  
5 this article.

6 You see JP Morgan plays an appearance in this article, the  
7 same JP Morgan that hates Elon.

8 And so he doesn't just sit with this info and twiddle his  
9 thumbs, and neither does anybody else.

10 (Document displayed)

11 **MR. SPIRO:** Everybody is digesting and looking at this  
12 news. Everybody knows it's big news. Inside of Goldman Sachs  
13 they're talking about who leaked this. Joe Fath is realizing  
14 as this article's breaking and the stock is rising and rising  
15 and rising, that Elon had to do so something. Joe Fath knew  
16 that. That's his email that day (Indicating).

17 (Document displayed)

18 **MR. SPIRO:** And there's something else in the article.  
19 I don't know if you ever noticed this when this exhibit came  
20 into evidence, but the FT writes that (As read):

21 "The Saudis' investment appeared to confirm

22 Mr. Musk's claim last week that 'We certainly  
23 could raise money.'"

24 Which means, for example, that a week before, a week  
25 before the tweets, he had already told the world. He didn't

## CLOSING ARGUMENT / SPIRO

1 need any money. Funding wasn't the issue.

2 So they tried to attack Elon's credibility: You don't  
3 remember which order, and this, and that, from five years ago.

4 And again, it's the same thing I said before. I guess he  
5 could have been coached and given talking points and berated  
6 into saying: I saw the thing and I sent it out within  
7 milliseconds so it was a split-second... That's not real life.  
8 That's not real life. He's not just sitting there.

9 And the fact that he doesn't remember it perfectly, that  
10 comports with common sense. It's the fog of war. This is all  
11 happening as he's racing to an airport, about to be on a plane  
12 where he will be disconnected. So he sends it out. And the  
13 price is rising and rising, and he's tweeting what he's  
14 thinking.

15 And again, just because it's imperfect doesn't prove  
16 fraud. There's nothing illegal about doing it when the  
17 market's open, by the way. Okay?

18 The Nasdaq looks at this, call them, and like two hours  
19 later the Nasdaq says: There is nothing to see here, and  
20 reopens this for trading.

21 And it's a small thing, but it's important. This whole  
22 idea that he's, like, tweeting when the markets open, those  
23 later tweets happen when the markets closed. He's not doing it  
24 because the markets open. He's doing it because this news  
25 broke. He's doing it for the reason that everybody knows he's



## CLOSING ARGUMENT / SPIRO

1 doing it.

2 Frankly, he probably would have been sued if he didn't do  
3 anything.

4 (Document displayed)

5 **MR. SPIRO:** And then you see Egon Durban's reaction,  
6 the man who knows the most. The man who was on the phone with  
7 him the night before. The man who's the subject matter expert,  
8 not the paid expert. He knows best whether it was a fair  
9 snapshot of where this situation was in Elon's consideration.

10 And Egon Durban tells you how it is. He's never seen that  
11 kind of transparency. Never seen something that disclosive.

12 So, listen. The rush tweets go out, and these investors  
13 you heard from, some by video, whatnot, you know, they stay at  
14 their conferences, they stay at their dinners, they send some  
15 emails around. Every reasonable investor was waiting for more  
16 information.

17 You never heard any witness in this case saying they  
18 bought any stock on the 7th.

19 Let me say that again. You never heard any witness in  
20 this case ever say they bought any stock on the 7th.  
21 Reasonable investors were waiting for more information. And  
22 the blog post came out just thereafter.

23 Fries bought the next day; Littleton, days later. And  
24 Mr. Musk was also not trading. That's how you know this wasn't  
25 fraud.

## CLOSING ARGUMENT / SPIRO

1 But, listen, the media is circling, lawyers are circling.  
2 And you know, wordsmithing is a funny thing. Language is a  
3 funny thing. Don't know if you've ever learned a language or  
4 taught a language or studied a language or -- but word choice  
5 is also a funny thing.

6 You know, we've got a kid who came over here from South  
7 Africa by way of Canada, who's in his dorm room drawing maps on  
8 a thing called the computer. He's alone. He's the kind of  
9 person who thinks impossible is possible, came here because  
10 dreams are possible. Met Antonio Gracias who came over here,  
11 son of immigrants, and they built Tesla. And as Sam Teller  
12 told you, sometimes his words need translation.

13 And so this unique person says something that isn't a term  
14 of art. Nobody knows exactly what it means. Everybody agrees  
15 with that. He doesn't think ahead of time in that rushed  
16 moment that this could be interpreted differently than what it  
17 means to him. That's what we're talking about here. That's  
18 what this whole case is about. That in that moment, he didn't  
19 think: How could my words be interpreted differently by you  
20 than they are to me?

21 These statements, they're in an informal context.

22 (Document displayed)

23 **MR. SPIRO:** You know, they're on Twitter. They're not  
24 even complete sentences, they're just tweets. There's more  
25 tweets than this, by the way, that day.

## CLOSING ARGUMENT / SPIRO

1        You know, 420, it's really 420 a share. He doesn't say  
2        that. There's a 2 included in one, there's a typo, there is a  
3        2 in one of the tweets. He's answering questions live. I  
4        mean, this is the context. The context. And you will see in  
5        the jury instructions that context matters. You have to assess  
6        this in context.

7        He's considering taking this private, and the issue is  
8        will he actually go forward. And that's what he's basically  
9        saying. But the plaintiffs have to lift two words. "Funding  
10       secured." Pull it out. Put a spotlight on it and gin it up.

11       And so they ask all these questions about "Funding  
12       secured" to the witnesses:

13       There wasn't a signed agreement, was there?

14       No, we never said there was a signed agreement.

15       And the way the witnesses interpreted it that you saw as  
16       the trial went on, they didn't think it meant the same thing as  
17       the plaintiff's lawyers seemed to think it meant. In this  
18       context. You have to look at the context. Nobody really knew  
19       what it meant.

20       (Document displayed)

21       **MR. SPIRO:** So did you ever notice that the  
22       plaintiff's lawyers never defined it either? Did you ever  
23       notice that? They ask a question, "Was it a written  
24       agreement?" But they never defined it. How clear and  
25       important could it be? They don't even bother to define it.

## CLOSING ARGUMENT / SPIRO

1 Egon Durban told you it wasn't a term of art. Egon says  
2 that it means something like the funds were available. Dan  
3 Dees told you it means something like in touch with, or knows  
4 about capital out there. There are terms of art in the  
5 financial world that people rely on. This isn't one of them.

6 So the plaintiffs kind of backpedaled with Egon, you know:

7 Well, was it committed? Was that a written commitment?

8 An oral commitment?

9 I mean if he says something and nobody knows exactly what  
10 it means, how important could it be? They never defined it.

11 And there's a reason. Because this is all a word game and  
12 a moving target. How can they prove their case, that this  
13 words -- phrase, that nobody knows what it means, defrauded  
14 anybody, if they can't even tell you factually what it means?  
15 That's a reason, alone, to find Mr. Musk liable -- not liable.

16 And so they try to say -- there's this argument peppered  
17 throughout that, like, these two words somehow show, you know,  
18 that this is more serious or something when taken in context of  
19 all of the other tweets in the blog post. This was serious.  
20 This was serious. This was a real proposal he had made to his  
21 board. So if these words left the listener with the impression  
22 that this was serious, that's great. It was serious. It was  
23 very serious.

24 So if these words made this a serious consideration

25 (Indicating quotation marks), more than a mere consideration

## CLOSING ARGUMENT / SPIRO

1 (Indicating quotation marks), then that's fine by me. It's the  
2 same state of affairs as actually existed.

3 And you know, I have been waiting a while to tell you, you  
4 know, there's this thing outside of courthouses, the scales of  
5 justice. And I don't think this has occurred to too many  
6 people. But, this whole case, this whole case essentially  
7 boils down to they think "Funding secured" suggests a bit of a  
8 lean, a little more emphasis than what it should have, based on  
9 the state of affairs, right? Basically, this whole case.

10 Well, guess what? The first part of the tweet, the main  
11 part of the tweet, the "Am considering" topic sentence of the  
12 tweet, it actually understates the state of affairs. Don't you  
13 see?

14 It was more than a mere consideration. He had made a  
15 proposal to the board. He's meeting with experts. He's  
16 actioning the plan. You see, if anything, this tweet in its  
17 totality is an understatement. That's a reason to find  
18 Mr. Musk not liable.

19 And, listen. I don't have the time to give you every  
20 reason that you should doubt the evidence and the proof that  
21 the plaintiff provided. All nine of you could have different  
22 reasons to believe they haven't met their burden of proof. You  
23 all don't have to solve every reason. You don't have to have  
24 the same reason. Each of you could have different reasons.  
25 There are lots of reasons to find Mr. Musk not liable. No

## CLOSING ARGUMENT / SPIRO

1 fraud has ever been built off the back of a consideration.

2 If you're considering something -- and I'll give you nine.  
3 If you're considering something and it's understood that you  
4 could never reach a conclusion or you could change your mind in  
5 an instant, everyone knows that, that's the hallmark of what a  
6 consideration is. If you're considering something, and  
7 something is added onto the consideration or within the  
8 consideration, it's still just a consideration.

9 Anything about funding could never, in this context, mean  
10 an exact dollar amount. He's talking in the same tweets about  
11 that they have no idea who's going to roll, and anything else.  
12 They couldn't have known percentage. They couldn't have known  
13 amounts. Everybody knows that. Everybody admits that.

14 So it's basically just this indefinite funding source.  
15 That's all it could mean. That's all it could mean to a  
16 reasonable investor. No one knew what the phrase meant. So if  
17 you decide in that instant to start gambling on it, then you're  
18 betting on a consideration.

19 Never in the history of the world has a fraud been based  
20 on a consideration. On something that's -- nobody knows what  
21 it means, that is too vague to have a definition. If you don't  
22 even know what something means, how important could it be?

23 It's also not material in the traditional way. A company  
24 buys a factory, they announce it, right? New factory. If, six  
25 months later, if you want to separate the two, they get, you

## CLOSING ARGUMENT / SPIRO

1 know, mez financing, they get a loan, you don't re-disclose  
2 that. That's not independently important.

3 And everybody assumes he knew it, he could get it, he had  
4 it. Littleton, Dees, Durban, the depositions. Everyone knew  
5 that. So it doesn't add anything to what people already knew.

6 And again, people didn't care. Everybody wanted to throw  
7 billions at it before he even sent the tweet. Dees and Durban  
8 and their investors want in for billions, with nothing more.

9 (Document displayed)

10 **MR. SPIRO:** And finally, whatever it means, it's not  
11 something materially different from the state of affairs.  
12 Again, you all don't have to have the same reason to doubt, you  
13 don't have to have the same reason to think that the plaintiffs  
14 haven't presented sufficient evidence. You could all have  
15 different reasons to think this isn't fraud, to check no.  
16 Different interpretations under any of them, it's not fraud,  
17 and check no.

18 Or maybe you have the same reason. Maybe your reason is  
19 Deepak Ahuja. He didn't think any of this was fraud. He was  
20 in the room. Look at his text. He doesn't seem surprised or  
21 alarmed, he isn't shocked, he doesn't think this is insane. He  
22 was in the room when it happened. He doesn't ask: What  
23 funding? Because he already knows. He also knows funding is  
24 not an issue. And he took from the meeting with the PIF the  
25 same essence as the tweet phrase, funding was secured.

## CLOSING ARGUMENT / SPIRO

1        Again, this is all in the "Am considering" context. And  
2        apparently all the tweets under that heading, the plaintiff  
3        thinks I haven't talked about the "Investor support confirmed"  
4        enough. It's his burden, not mine. And I think the claim is  
5        absurd, but we'll talk about it quickly.

6        "Investor support confirmed," okay, is this tweet. He has  
7        the PIF and people like Antonio Gracias and Ron Baron, ice  
8        cream cones or not. And so, obviously, he has investor  
9        support. Whether it's confirmed in this sort of technical,  
10       upper-case, "Investor Support," I again don't know how  
11       precisely you can confirm that if you don't know what the  
12       structure is and the percentages needed from them. And no  
13       reasonable investor would have interpreted it that way.

14       "Investor support" can't mean a shareholder vote. It's in  
15       the same sentence as saying it's contingent on a shareholder  
16       vote. And so everybody seems to think it means the same thing  
17       as "Funding secured."

18       (Document displayed)

19       **MR. SPIRO:** Including their lead plaintiff. And, of  
20       course, you know that Ron Baron is emailing him, the wise Ron  
21       Baron, before his tweet ever goes out, saying: I'm in.

22       Is that confirmed investor support? It is to me. It is  
23       to everybody else I know. That's not good enough?

24       And again, if "Investor support confirmed" means the same  
25       thing as "Funding secured," then I don't know what we're even



## CLOSING ARGUMENT / SPIRO

1 doing here. It certainly made -- made sense to Mr. Musk, the  
2 same things he intended to convey through both.

3 So again, I don't know the difference, and it was  
4 unmistakably true in his mind. If anything, the "Investor  
5 support confirmed" softens and kind of contextualizes the  
6 "Funding secured" if you're taking them the same way.

7 But they have to press on this. They have to press on  
8 this in summation. I knew they would, because they knew  
9 funding wasn't an issue. That's not why the deal didn't go  
10 forward. So they have to torture this tweet.

11 And remember, your mind goes back to why we're here, that  
12 they advertised to Tim Fries that the so-called fraud was  
13 uncovered on the 8th, but now we're in a case where it ends the  
14 17th. Not because that's true or the truth matters, but  
15 because they need to get to that *New York Times* story.

16 You remember what we're doing here. These are the folks  
17 that sued Elon because he sent out a tweet about Goldman Sachs  
18 and Silver Lake, saying that they were working for him, when  
19 the retainer letter was signed out later. This is what we're  
20 doing here.

21 But press on, they do. They want billions of dollars.  
22 They've got to get to that *New York Times* article. So they go  
23 to the next tweet.

24 "Only reason," okay -- "Only" is the magic word in this  
25 one. And I said to you before, I guess technically,

## CLOSING ARGUMENT / SPIRO

1 mathematically, it is not the only reason.

2       You know, the only reason that the Forty-Niners didn't get  
3 to the Super Bowl was because of the calls by the refs. Well,  
4 that wasn't the only reason. Maybe the quarterback; there's  
5 other reasons, but that's how people talk. Lots of people talk  
6 like that. Really formal people talk like that. "The only  
7 reason I was late to that meeting, I was in traffic." Well,  
8 that's not the only reason I was late. It's just how people  
9 talk.

10       No one thought this was literally the only reason. He  
11 hadn't even made a decision yet. If you're considering  
12 something and you say it from the very first words, and then  
13 you attach to the tweets in the topic sentence of the blog post  
14 "I have not made a decision yet," how much brighter do you want  
15 to make it that this is all uncertain?

16       You've put everyone on notice. There are multiple  
17 contingencies. Which is why lead plaintiff Littleton didn't  
18 give this tweet much mind. Elon was going to make it happen.  
19 The intermediary steps, the dotting i's and crossing t's, those  
20 things didn't matter. Elon was going to make it happen.

21       Again, support can't be absolutely confirmed in the  
22 technical sense, voting. But in the real world, this was just  
23 a consideration, his considerations, his thoughts: Funding is  
24 secured in my mind. Investors are supportive and it's  
25 confirmed to me. His mind. The only contingency I ultimately

## CLOSING ARGUMENT / SPIRO

1 see is the shareholders. I want to do what's right by them.

2 And, ultimately, he was right. It's the reason it didn't  
3 go forward. That's not fraud.

4 And you can see as he continues to tweet that day,  
5 answering questions, interacting with everyone, this was very  
6 Elon. This is how he is. He takes products questions; he  
7 invites the retail shareholders on earnings calls. It's just  
8 his way. These everyday shareholders, they believed in Tesla  
9 when no one else would. And he wasn't going to leave them now.

10 And as the couple of hours ends on the 7th and the blog  
11 post is out, the blog post that Deepak Ahuja signs off on, the  
12 blog post that general counsel attorney Todd Maron signs off,  
13 Dan Dees sends him an email. It's all perfectly clear. It's  
14 perfectly clear. The perfectly clear blog post is 600-plus  
15 words, not a two-word tweet. It's the same time period, on the  
16 same day, attached to the tweets. We hear nothing ever from  
17 them about these 600 words. And that's the reason that you  
18 need to understand that they can never prove this case.

19 Their witnesses have blog post amnesia. All the  
20 third-party witnesses, everybody else in the real world reads  
21 the blog post together with the tweets.

22 That's why I asked Dan Dees: Did you block everything  
23 from your mind as you were looking at the tweets?

24 No, I didn't. Obviously, I saw the blog post.

25 And the blog post, do you see what it says about

## CLOSING ARGUMENT / SPIRO

1 shareholder vote? It says: Ultimately what I need is to get  
2 through is the shareholder vote. Ultimately. Not only,  
3 ultimately.

4 And there's other contingencies in the blog post. Lots of  
5 contingencies. They hadn't decided on process and structure,  
6 or even made a decision. This was just a consideration, and  
7 the blog post makes that again clear.

8 And so the way -- you know, one way to look at it is, you  
9 know, they have to prove what it means. Prove that what it  
10 means matters. Right? You know, if Steph Curry's getting  
11 traded, that might matter. That he's bringing his jump shot  
12 with him is nothing. It's a throw-away. It doesn't matter.  
13 Prove whether it means something different than the state of  
14 affairs.

15 And even if they get past all of that, none of which they  
16 can prove, the whole thing is conditional. You can't be liable  
17 for fraud because somebody wants to bet on a consideration.

18 So Elon Musk gets back to work. He doesn't want some  
19 investor demanding a factory too soon; he wants a diverse  
20 investor base. So they work. They work together; they work in  
21 good faith. Actions speak louder than words.

22 And the media -- no offense -- they -- you know, they do  
23 what the media does at times. They swirl and they kick up  
24 dust, more dust. You know: What are we going to write about  
25 today?

## CLOSING ARGUMENT / SPIRO

1           And I heard some questions about, like, if a reporter  
2       writes about something, that makes it important. They write  
3       about lots of things. Mr. Musk knocks over a Diet Coke,  
4       they'll write about it. They wanted to write about what the  
5       "pedo guy" insult meant. They write about Lindsay Lohan.  
6       These topics aren't fraud. They're looking for something to  
7       write about.

8           What reporters write and say isn't evidence. We're here  
9       in Federal Court in a securities fraud trial. But people had  
10      questions. That proves something? People have questions? It  
11      proves -- I'll tell you what it proves. It proves they didn't  
12      know what it means. It proves it wasn't a term of art. And if  
13      you're betting on that, you're just gambling and looking for  
14      lawsuits as insurance. That's what Koney told you.

15          Koney told, yeah, he was curious, like, what does it mean?  
16      He didn't tell you it mattered. And that's why we played his  
17      video. Because we wanted to show you that the emails that  
18      they're entering and showing you snippets of, it's games.  
19      They're showing you the emails, saying, oh, look, he's asking  
20      you a question, and then they don't play you the video where  
21      Koney says: Yeah, I'm asking a question. I ask a lot of  
22      questions. Didn't change his investment decision.

23          But when Elon sees that this dust is still in the air and  
24      there's various media stories and they're coming up with  
25      questions and this "Funding secured" phrase which doesn't mean

## CLOSING ARGUMENT / SPIRO

1 anything, is something that they can kick up, well, the story  
2 kicks up Thursday; it isn't dead by Friday. There's this  
3 article that says the Saudis never spoke to him, then it says  
4 the Saudis were in talks with them. You saw that.

5 And so three trading days later, right, when the dust is  
6 still in the air, before the market opens, they put up that  
7 blog post of August 13th. The beginning of trial, they made it  
8 sound like it was, you know, years later. It was three  
9 business days. In his 20 years at Tesla, three business days.

10 And remember, the plaintiffs do not claim that the  
11 August 13th blog post is fraudulent or false. It was signed  
12 off on by lawyers. It's over a thousand words. It lays it all  
13 out in longer-form detail. Detail the world didn't know.  
14 Detail that had always been behind the scenes. The details  
15 that you, the jury, learned over the last few weeks.

16 And you know how the market reacts? Market goes up. The  
17 details increased confidence that funding wasn't an issue.

18 (Document displayed)

19 **MR. SPIRO:** And they say: Wait a minute, wait a  
20 minute, that blog post ends the case. Ends the case. This  
21 case, case over. So they have to come up with that -- that  
22 lie. Remember in opening statement, that -- the "best  
23 estimate" lie?

24 And, you know, they were crossing Elon about it. He said:  
25 Well, wait a second. You're making it sound like I said

## CLOSING ARGUMENT / SPIRO

1 exactly 66 percent. I said "best estimate." I said "best  
2 estimate."

3 And then you -- you trace it back, and Dan Dees, his  
4 banker, gave him a presentation, which is actually -- so I told  
5 you all that it was about 62 percent. If you really factor in  
6 Elon and affiliates, it's like 64 percent. And so Elon says  
7 his best estimate is 66 percent. Okay? So, that's not a lie  
8 in the blog post. Okay?

9 Elon had no motive ever to do anything wrong here. He had  
10 no motive to lie in the blog post. Somebody else here made a  
11 misstatement about the blog post. Somebody who does have a  
12 motive to lie.

13 The blog post is the accurate details, and the stock goes  
14 up. And the blog post was not materially different than what  
15 the world took from the tweets. Just ask the lead plaintiff.

16 (Documents displayed)

17 **MR. SPIRO:** And the blog post, it was signed off on by  
18 Deepak Ahuja.

19 (Document displayed)

20 **MR. SPIRO:** And they had to cross-examine Deepak  
21 Ahuja. He's fatal to their case. There was nothing to  
22 cross-examine him on, so he -- they said to him -- I don't know  
23 if you remember the big moment: You have lawyers, like every  
24 other witness in this case, you have lawyers. Right? As you  
25 are testifying. Like every single other witness in this case.

## CLOSING ARGUMENT / SPIRO

1 But they had to say that to him, because they didn't know  
2 what to do with him, because, I mean, did that man look like he  
3 wasn't being straightforward with you? That he wasn't being  
4 truthful and direct with you? Give me a break. That man has  
5 impeccable character of the highest order. And he came in  
6 here, and he told an oath, and he told you what happened. So  
7 that's the best they got, the: Do you have a lawyer?

8 Listen. Unless you think Deepak Ahuja committed perjury,  
9 or fraud -- literally, that's what you'd have to think to find  
10 Mr. Musk liable. They can only win this case if you find that  
11 Mr. Ahuja committed fraud or committed perjury. He was there  
12 in that room.

13 And your mind goes back to that meeting with the PIF.  
14 Because if that meeting is real, and it's true, and it doesn't  
15 differ in a material way from the state of affairs from the  
16 tweet, from the blog post, then nothing else matters. The  
17 tweet, even under their view, becomes, at most, a mistake, if  
18 those meetings with the PIF are true. A painful mistake, but a  
19 mistake. Not a fraud.

20 So long as the state of affairs and the meeting with the  
21 PIF is as you heard, and as the board heard right after as it  
22 was immediately relayed to them, as long as you believe that,  
23 this case is over.

24 Same call for Deepak Ahuja. Deepak, Martin, busiest day  
25 of the year, they get up and they move quickly through the



## CLOSING ARGUMENT / SPIRO

1 factory to that closed-door meeting. Deepak enters the room.  
2 The door closes behind him. Martin can't hear anything that's  
3 going on inside the room.

4 The conversation before Deepak arrived is recapped. And  
5 Yasir indicates: Yeah. Deepak, the CFO, summoned to this  
6 serious meeting, gives the estimates of 50 percent and  
7 \$30 billion. There were numbers. He told you that. They were  
8 in the board minutes.

9 And Yasir's teams has their tablet open with the charts.  
10 Yasir doesn't flinch. To the contrary, funding would not be an  
11 issue. He says to Deepak Ahuja: We are ready to act.

12 And Martin is still waiting patiently by the door. You  
13 can almost picture it, Martin there waiting.

14 So Deepak comes back after the meeting, and he tells  
15 Martin: There was an offer and there was an acceptance. And  
16 Martin's mind starts to race. He had just come to this  
17 country. Would he be forced to leave this country? If Tesla  
18 goes private, IR, his job, would be no longer needed.

19 And Deepak puts his hand on his shoulder and tells him:  
20 Don't worry. We always take care of good people. You will  
21 stay here at Tesla, a private Tesla.

22 They were all there that day, with the meeting with the  
23 PIF. They were all at the door of that meeting. Sam Teller,  
24 Martin Viecha and Deepak Ahuja. They were standing at that  
25 door. They came and told you what happened. For plaintiff to

## CLOSING ARGUMENT / SPIRO

1 win, these people have to all be lying.

2 Deepak Ahuja would have to have come up with a lie on the  
3 spot in that candid moment with Martin Viecha, for them to win  
4 this case. That would have had to be a lie. Martin would have  
5 had to make it up, too, by the way. Deepak hasn't worked there  
6 in years. You'd have to believe they both lied to find  
7 Mr. Musk liable.

8 And, listen. The PIF didn't come here, okay? We wanted  
9 them here; they didn't come here. Plaintiffs have the burden  
10 of proof; they didn't bring them here. There's no evidence  
11 they wanted them here. You know, where they are. But of  
12 course, they didn't want them here. Okay? They wanted Elon  
13 Musk alone on that island, called first in their case.

14 They wanted to put the plaintiffs up first to play on your  
15 emotions. The professor to come in and tell you that this  
16 email is fake and the whole thing's a hoax. So they could call  
17 Elon on cross before you ever got introduced to him, or heard  
18 from any of the great people who were there that day who knew  
19 the facts on the ground, and would end this case.

20 And so they don't want the PIF here to be cross-examined  
21 about the after-the-fact minutes and the so-called minutes and  
22 the after-the-fact texts. And you can imagine what would  
23 unfold if they came here and were cross-examined, but it  
24 doesn't matter. They didn't give you any credible evidence  
25 that the so-called minutes or the texts, you know, matter.

## CLOSING ARGUMENT / SPIRO

1        You know, these minutes of -- you know, purport to be a  
2 transcript of a 45-minute meeting, there's like eight lines.  
3 Nobody came in here and told you those were the minutes, or  
4 they weren't created years later and, you know -- I mean, even  
5 if you think that the minutes are real, you have no credible  
6 evidence that they are or that they are what they purport to be  
7 or they are complete. They are just, at most, an approximation  
8 of what happened. Not precise. You can't count on them being  
9 precise.

10        And guess what? It doesn't matter. Because even if you  
11 believe those minutes, it doesn't change the facts. It doesn't  
12 change the state of affairs. It's still not fraud. It's still  
13 not materially different than what was communicated in those  
14 tweets.

15        And, you can see here (Indicating) how -- from that  
16 meeting, you can see from the texts how the tone and tenor of  
17 that meeting changed. You can see it. You can feel it.

18        (Document displayed)

19        **MR. SPIRO:** And you can also feel something in Yasir's  
20 texts. Okay? Because eventually, in the texts, he's not  
21 responding every few hours or every few days and talking to  
22 whoever he's talking to. There's a time in which he's  
23 answering, like, second by second by second.

24        And so when he asks for the finances, Elon says: Yeah,  
25 right. You just bought billions of dollars based on public

## CLOSING ARGUMENT / SPIRO

1 financials. Good try.

2 And then Yasir changes to what he really wants: Details  
3 on how we can take the company private. That's what we agreed  
4 to. How we can take the company private. The steps that are  
5 made after agreeing that you would take the company private,  
6 how we're going to do it. What is the required percentage?  
7 How much money do you need? That's what that means. How many  
8 people are going to roll, and what's the required percentage?

9 You know, there's no time. You see how quick these  
10 timestamps are? There's no time here to backpedal and think  
11 and check and -- you know.

12 And there's something else you might notice. Never once  
13 does he ask about price. Never once does he ask about money.  
14 Never once does he say he isn't in. And do you know that blog  
15 post where he said like loose words, seems like: Oh, why'd you  
16 send that blog post out, loose words?

17 I don't know if you guys caught this, but in the blog  
18 post, it has what Yasir says in that meeting, right? He's over  
19 here from the Kingdom of Saudi Arabia, he's in the Tesla  
20 factory, he has Elon right where he wants him the night before  
21 the earnings call, and he says to him, he says: Listen, Elon,  
22 don't worry about it. I'm the decision-maker.

23 You know, and now all of a sudden, the fact that he said  
24 that meeting and that meeting is going on, you know, live  
25 stream and, you know, I don't know what conversation were going

## CLOSING ARGUMENT / SPIRO

1 out about with him and other people about whether he was really  
2 the sole decision-maker and why he said that. I mean, he  
3 didn't come here and explain that. But in any event, it's not  
4 what he says, it's what he never says. He never says he's out.  
5 Right? Never says he's out.

6 (Document displayed)

7 **MR. SPIRO:** And, in fact, after the text, he calls  
8 Egon Durban. You know, after the media dies down and the dust  
9 is settled, he calls Egon Durban and he tells him: We're in.  
10 And Dan Dees, their banker, knew he was in all along.

11 Like I said, Goldman Sachs, remember, they worked for Elon  
12 in this transaction, this potential transaction. But they bank  
13 for the PIF. And they seem to know, on August 4th, he doesn't  
14 need any money.

15 (Document displayed)

16 **MR. SPIRO:** Doesn't need any money. Look at that  
17 message. They know he doesn't need any money. And they, at  
18 the end of the day, two weeks later, say the PIF wants to be  
19 involved, confirms they were always in, and that funding was  
20 never an issue.

21 Egon Durban tells you he wants to give 6 billion. They go  
22 up then to 7 or 10 billion. He wants to do all of this before  
23 knowing all of the details. He says to Elon Musk: All of this  
24 can be done before the 10th. It's done. Don't worry about it.

25 You know, so we hear -- you know, we have this case, what

## CLOSING ARGUMENT / SPIRO

1 does "Funding secured" means, and how did people interpret it  
2 to mean, and what they interpreted it, what does that mean, and  
3 is it materially different?

4 Funding was never the point. Funding was never the issue  
5 in the real world. It wasn't the issue on August 4th. It  
6 wasn't the issue on August 7th. It wasn't the issue on  
7 August 23rd, in the minutes that has those statements from  
8 Deepak Ahuja and the bankers. It was never the issue.

9 And when you look at the jury instructions, you will see  
10 that there is an example regarding material misrepresentations.

11 (Document displayed)

12 **MR. SPIRO:** And the example they give is revenue.  
13 Revenue. Something that is core to a company's being as  
14 revenue is not necessarily material. Something that big as  
15 revenue, you can misstate, and it's not fraud. It's not  
16 material. It's only material if you can show -- prove -- that  
17 the state of affairs is materially different than whatever  
18 you're saying. Materially different. Something even as big as  
19 revenue.

20 (Document displayed)

21 **MR. SPIRO:** Funding was never the issue. And so  
22 again, I'm just going to show you what everybody's saying about  
23 facts on the ground versus the tweet.

24 (Document displayed)

25 **THE COURT:** Mr. Spiro, we may need to take a break

## CLOSING ARGUMENT / SPIRO

1 soon. We've been going at it for almost two hours and 20  
2 minutes, total. I don't know if there's a convenient break  
3 point?

4 **MR. SPIRO:** Yes. I'll -- 60 seconds.

5 **THE COURT:** (Nods head)

6 **MR. SPIRO:** Ultimately, the reason the company didn't  
7 go private --

8 (Documents displayed)

9 **MR. SPIRO:** -- was the reason Elon predicted and  
10 flagged as a risk from the beginning, as did the lead  
11 plaintiff, by the way, in his rumor email where he says: I  
12 don't think the investors are ever going to accept this.

13 You see, Elon Musk wanted to include the retail  
14 shareholders. That's what the exhibits and testimony about  
15 SPVs was all about. The structure that would allow many to be  
16 included and pool, so this funding issue doesn't cause loss to  
17 the shareholders. This whole thing was for the shareholders.

18 (Documents displayed)

19 **MR. SPIRO:** And they -- when they could not be as  
20 easily included --

21 (Documents displayed)

22 **MR. SPIRO:** -- in the tweets, when they could not be  
23 as easily included in the deal, that's why they didn't go  
24 private. Not because of funding. Funding was never an issue.

25 Okay. We can take a break, Your Honor.

## PROCEEDINGS

1           **THE COURT:** All right. We'll take a morning break,  
2           our usual 20-minute break, and see you back.

3           **THE COURTROOM DEPUTY:** All rise for the jury.  
4           (Jury excused)

5           (The following proceedings were held outside of the  
6           presence of the Jury)

7           **THE COURT:** All right, if you can give me a time  
8           estimate of how much longer you are going to be?

9           **MR. SPIRO:** A little over 20 minutes, approximately  
10          20.

11          **THE COURT:** Okay. Your rebuttal?

12          **MR. PORRITT:** I'm thinking ten to 15 minutes.

13          **THE COURT:** All right. So we'll get to the jury right  
14          around the noon break. Shortly after noon.

15          **MR. PORRITT:** Shortly after. I hope so, Your Honor.

16          **THE COURT:** Okay. All right. Thank you.

17          **THE COURTROOM DEPUTY:** Court is in recess.  
18          (Recess taken from 11:24 a.m. to 11:43 a.m.)

19          (The following proceedings were held outside of the  
20          presence of the Jury)

21          **THE COURT:** Okay, you ready to retrieve the jury?

22          **THE COURTROOM DEPUTY:** Yep.

23          (The following proceedings were held in the presence of  
24          the Jury)

25          **THE COURTROOM DEPUTY:** All rise for the jury.



**CLOSING ARGUMENT / SPIRO**

1           **THE COURT:** All right, have a seat, everyone. Thank  
2 you.

3           Welcome back, members of the jury. We are going to  
4 continue with the defendant's closing argument.

5           Mr. Spiro?

6           **MR. SPIRO:** Thank you.

7                           **CLOSING ARGUMENT, RESUMED**

8           **BY MR. SPIRO**

9           Where we left off, we were talking about how there was  
10 ample funding. That funding wasn't an issue. And that the  
11 state of affairs on the ground wasn't materially different than  
12 "Funding secured."

13           The detailed state of affairs was described in the  
14 August 13th blog post, "Why Did I Say 'Funding Secured'?" And  
15 the post goes on to talk about all the other contingencies and  
16 next steps, all of the details of both. Funding, and the only  
17 contingency.

18           (Document displayed)

19           **MR. SPIRO:** The stock went up on August the 7th, the  
20 original tweets. Right? But it went up because they announced  
21 a consideration of a potential transaction. That's why it goes  
22 up. It doesn't go up because of details such as funding and  
23 contingencies that have to go through.

24           And you know that because of common sense, of course, but  
25 there's another reason you know that, which is because on

## CLOSING ARGUMENT / SPIRO

1 August 13th, when the detailed state of affairs becomes known,  
2 the price goes up. You see, the detailed state of affairs made  
3 people more confident that the deal would close. More  
4 confident in funding, more confident in the amount of  
5 contingencies. That's how you know they can never prove  
6 materiality.

7 (Document displayed)

8 **MR. SPIRO:** As Dan Dees told you, there was ample  
9 funding. Those were the facts on the ground.

10 (Documents displayed)

11 **MR. SPIRO:** They all told you that.

12 (Document displayed)

13 **MR. SPIRO:** And so what is plaintiffs to do? They  
14 have hundreds of investors, depositions to be played. You know, we  
15 talked about how none of those witnesses bought any stock  
16 following the tweets. None of them say that this was fraud,  
17 none of them. Right?

18 But then JP Morgan comes in, the analyst, you know, the  
19 JP Morgan that hates Elon Musk. And, you know, they said in  
20 opening statement he has no axe to grind, but they have an axe  
21 to grind. They're suing Tesla in the same related case because  
22 of this hatred, and they're going to get their day in court,  
23 too, I promise.

24 So as this pettiness has sort of continued, this analyst,  
25 he doesn't come to trial to be cross-examined. Right? This is

## CLOSING ARGUMENT / SPIRO

1 the video that is played. And they don't bring their star  
2 witness here.

3 So he says basically that when the news comes out, he  
4 doesn't leave his dinner, doesn't leave his conference, doesn't  
5 have any emails from that day -- because he doesn't leave his  
6 dinner and he doesn't leave his conference; I wonder what those  
7 emails would show.

8 And then the tweet happens. He's asked, you know: Well,  
9 who did you check with? You're a junior analyst. Who did you  
10 check with at JP Morgan about how these transactions happened?

11 He checked with nobody. No emails about that, either.  
12 Wonder what those emails would show. So he doesn't talk to  
13 anybody. He has this -- these motives. There's no emails.  
14 He's got no experience. He checks with no one.

15 He doesn't even understand, if you look at it, that Elon  
16 is the bidder here. He doesn't do the math to understand that  
17 420 is a 20 percent premium. He says, he actually says: I'm  
18 speculating (indicating quotation marks). And he gives a  
19 50 percent chance of its going through. Total coin flip.

20 (Reporter clarification)

21 **MR. SPIRO:** Total coin flip.

22 You jurors are not allowed to speculate. You can only  
23 base your testimony on credible evidence.

24 And so they put up the analyst report. You know,  
25 ultimately, as we tried to explain, he's underweight, Tesla.

## CLOSING ARGUMENT / SPIRO

1 He's betting against Tesla. He's shorting Tesla. And people  
2 who were betting against Tesla and were shorting Tesla want bad  
3 things to happen to Tesla. And anybody who was shorting Tesla  
4 at this time didn't do very well.

5 In any event, when they put up the analyst report, you can  
6 see in the hide-the-ball scenario, they black out or they hide  
7 the fact that there was an attachment to a blog post, and the  
8 statement "To us this suggests more than a mere consideration."

9 "More than a mere consideration." So to him, it suggested  
10 that this was a serious consideration, which is exactly right.  
11 It was a serious consideration.

12 (Document displayed)

13 **MR. SPIRO:** It was a serious consideration, and  
14 everybody took that first phrase as important, even their  
15 plaintiff.

16 (Document displayed)

17 **MR. SPIRO:** So did T. Rowe Price. That's what they're  
18 betting on. They're betting on: Is Elon serious? And if  
19 that's what they took from those tweets -- again, the actual  
20 language doesn't matter. If it's the same as the state of  
21 affairs, you know how serious, you know the steps, you know the  
22 actions, that is why he's not liable.

23 (Document displayed)

24 **MR. SPIRO:** Everybody, even this random clip from a  
25 news anchor, "Am considering," right? That's the -- that's

## CLOSING ARGUMENT / SPIRO

1 what everybody's focused on.

2 (Document displayed)

3 **MR. SPIRO:** So, but the JP Morgan analyst, you have to  
4 understand, he also says he doesn't think funding is going to  
5 ultimately be an issue, and he says that the blog post is a  
6 walk-back. That's what he says. He says the blog post clears  
7 it up for him. That's what he says, it's a walk-back. That's  
8 the quote.

9 And guess what's not in his analyst report? Wouldn't you  
10 know it, the *New York Times* article. Nowhere in his analyst  
11 report. Not one of their witnesses is ever shown or answers a  
12 question about that *New York Times* story.

13 And he doesn't say that Mr. Musk tried to defraud him.  
14 Remember, it was a small thing, but it's important. The  
15 Antonio Gracias, the lead director, goes after the decision not  
16 to go private, and he goes and he meets with various investors  
17 to talk to them. And not one of them is worried about the  
18 tweets and their technical meaning. None of them are saying we  
19 were defrauded. No. That's not what they care about. They  
20 care about Elon. How's Elon doing? How's his head space  
21 doing?

22 They can't accept that. They can't accept that just  
23 because there's a rushed tweet, it wasn't different than the  
24 more detailed state of affairs. This wasn't a big hoax. This  
25 was very real, and very genuine. So they have to move on to

## CLOSING ARGUMENT / SPIRO

1 damages.

2 (Documents displayed)

3 **MR. SPIRO:** They have to press ahead. They've not  
4 proved liability so they don't even get here, but I have to  
5 talk about, briefly, causation damages. Because this part of  
6 their case makes our case stronger. They can't prove why the  
7 stock went up, or why the stock went down. They have to prove  
8 both.

9 They admit -- literally admitted on the stand they can't  
10 prove either. That's fatal to their case. They admit it as to  
11 both. "Funding secured" doesn't move the market. A possible  
12 take-private does, not a funding.

13 Their expert told you that the "Am considering" tweet  
14 would have the same effect, absent "Funding secured." That is  
15 the end of this case. They cannot prove -- they admitted on  
16 the stand, they told you: We lose. They told you, under oath,  
17 that they lose. They told you the statement would not have  
18 made a difference. They can't prove causation; game over.

19 **MR. SPIRO:** Listen, stocks move all the time for lots  
20 of reasons. The stock was very volatile.

21 It was a very short, cherrypicked time by plaintiffs'  
22 lawyers, this time that this was going on. They want to punish  
23 Musk for using two words, but the market moves all the time.  
24 He apologizes, it moves the market. It moves by random chance.  
25 You heard that from their experts, "random chance."

## CLOSING ARGUMENT / SPIRO

1       The media doesn't write stories that say: Oh, there's no  
2 news, nothing to see here. And their own expert told you that  
3 it moves all the time for random chance, and that Tesla's a  
4 very volatile stock. And that it especially moves by random  
5 chance.

6       And the statements in this case come directly on the heels  
7 of the other Saudi news, right, and nobody blocks that from  
8 their mind. They don't deal with that. Nobody blocks that  
9 from their mind as they're seeing the Saudi news, and on the  
10 heels of it, these tweets.

11       And again, one of their experts admits that they didn't  
12 try to show the cause of half of the tweet. That was Professor  
13 Hartzmark.

14       (Document displayed)

15       **MR. SPIRO:** And the other admitted the undeniably  
16 truthful portion would have caused the exact same stock  
17 reaction as we saw. No causation. Their experts didn't even  
18 take the time to show you that if all the other statements made  
19 by Musk on the 7th of August, including the blog post, they  
20 never took the time to carve them out from the statement that  
21 they don't like. They have to do that. It's in your jury  
22 instructions. They are not allowed to take all of the  
23 information and just bundle it like they did.

24       The effect, the impact of the tweets on the market, it was  
25 the same.

## CLOSING ARGUMENT / SPIRO

1        If the stock goes to the same place it would have gone if  
2        he was just considering, then definitionally, there are no  
3        damages. Damages are the difference between what happened and  
4        what would have happened, had the misstatements not been made.  
5        He told you, the expert, there was no difference. No damages.

6        And the second expert, Hartzmark, tells you the same  
7        thing. He doesn't disaggregate. There's no debate; he didn't  
8        disaggregate. The jury instructions tell you he has to. He  
9        didn't. He read those 27 tweets together, just like I told you  
10       from the beginning, to all do it under the "Am considering"  
11       headline. They told you read them all separately. Their  
12       damages expert told you to read them all together.

13       He doesn't add the 600 words of the blog post, they have  
14       to run from the blog post. He says it's difficult but not  
15       impossible to disaggregate. He didn't show you. There's no  
16       debate. He didn't disaggregate. And he spoke for a long time.  
17       And all these, you know, long answers, and they never asked  
18       him -- you know, you can ask experts hypotheticals. They never  
19       asked him: "Well, if you just took the true state of affairs,  
20       what would have happened to the market?" What would have  
21       happened to the market? Because they know the answer. They  
22       know it's not materially different.

23       (Document displayed)

24       **MR. SPIRO:** So they can't get past that threshold,  
25       either the causation threshold or the damages threshold. But



## CLOSING ARGUMENT / SPIRO

1 guess what? Once they get into damages, they got all their  
2 numbers wrong. The damages expert, the guys with the numbers,  
3 they got all their numbers wrong.

4 The first expert redid his numbers before coming to court.  
5 You heard that. The methodology that he used in the two  
6 different calculations changed every single number around.  
7 Turned winners into losers and losers into winners. Not much  
8 more to say than that. He also turns his numbers over to  
9 Professor Hartzmark. So they're just embedded into his  
10 calculations.

11 That was better than the second expert. The second expert  
12 actually figured it out live, on the stand, that all of his  
13 numbers were wrong. Live, on the stand. And he told you that  
14 he forgot, and there was a copy-and-paste error, and that he  
15 did it multiple times, and he didn't catch it. And you could  
16 see an ice cube melting as he was trying to describe that.

17 And the next day he came in, and I wanted to have a  
18 question asked, just, you know: Did you talk to anybody about  
19 your testimony, right, under oath? Just tell the jury, did you  
20 tell anybody about your testimony?

21 No.

22 Right?

23 Plaintiff's lawyer stands up, right? They'd been working  
24 together for -- on other cases and things, you know.

25 Plaintiff's lawyer stands up on redirect, and starts asking him

## CLOSING ARGUMENT / SPIRO

1 questions. It's like boom, boom, boom, boom. They're trying  
2 to explain away the numbers.

3 Oh, you just take that from Slide 11 and you move it over  
4 here and you move it over there.

5 Did you watch that? Did you watch that choreographic  
6 routine? I mean, did you see that? So they're trying to fix  
7 it live.

8 And here's the punchline of this whole thing. After all  
9 of that, they're sticking to the wrong numbers. The numbers  
10 that they show you on these charts, they're the ones that he  
11 said were wrong. They didn't even fix the numbers that he  
12 fixed on the stand.

13 I mean, the -- and then the explanation they give, oh,  
14 they were just being conservative. Right? First time in the  
15 history of modern law that the plaintiff's lawyer and the  
16 experts were being really, really conservative with their  
17 estimates, so you can just accept the now new estimates he did  
18 on the stand.

19 Just take our word for it, just trust us. Just -- just  
20 enter those numbers onto the verdict form, the numbers he told  
21 you were wrong.

22 So again, this other thing I have to say is they have the  
23 burden of proof. He said a few times, you know, you know, why  
24 didn't he -- he has the burden of proof. They don't just have  
25 to prove this. They have to be able to explain it well enough

## CLOSING ARGUMENT / SPIRO

1 to you that in a matter of this importance, you can be  
2 comfortable that you fully understand the concepts of implied  
3 volatility and all of these other things. That you're  
4 comfortable in a federal courtroom that you can issue a verdict  
5 based on that.

6 This volatility routine he did, it's just the plaintiff's  
7 lawyers talking with charts. That's not evidence. Why didn't  
8 we call an expert? I mean, they didn't prove anything. Their  
9 experts admitted to you they can't prove causation. Under  
10 oath, admitted to you. I don't need to call an expert to read  
11 their testimony back to you. You don't need to be a weatherman  
12 to know which way the wind blows.

13 But again, I'm not surprised their numbers didn't check  
14 out. Their whole story doesn't check out. The stock wasn't  
15 going down on the 17th because of some revelation of fraud.

16 Remember, I told you that in a normal case, stocks plummet  
17 when there's a revelation of fraud. That didn't happen here.  
18 The blog post on the 13th truthfully discloses the detailed  
19 state of affairs, and no one says otherwise. Everyone knew the  
20 details about funding; they knew that the only reason why was  
21 not literally the only reason. Stock goes up. That's the end  
22 of their case. Truth comes out, 13th, that's it. Because  
23 anything that comes after can't be a revelation of what  
24 happened on the 7th, if everything comes out on the 13th.  
25 Because the truth is all out there.

## CLOSING ARGUMENT / SPIRO

1 Not only did the stock go up on the 13th, but their expert  
2 admitted --

3 (Documents displayed)

4 **MR. SPIRO:** -- that the difference between the 7th and  
5 the 13th, that first time period, was not statistically  
6 significant. That it was -- it was -- randomness could just as  
7 easily explain it. It was not statistically significant. He  
8 cannot separate that movement from chance. That's not enough.  
9 That's why they need the *New York Times* article.

10 Remember, that's the whole thing. That's why they are  
11 trapped with that blog post I told you at the beginning, that's  
12 the whole lie they cooked up with the two thirds of the  
13 shareholders' best estimate, they need that *New York Times*  
14 article or they lose, they lose.

15 So what did Professor Hartzmark say was false about the  
16 blog post to keep this idea of this so-called fraud alive? He  
17 says: Premature at best. He says the tweets were premature at  
18 best. Those are his words. What he says in essence is that  
19 the tweets on the 7th, he's not saying that funding wasn't  
20 there, he's not saying that, you know, that he wasn't  
21 considering it. He's just saying it was a bit premature.  
22 Everybody else stated that that doesn't matter. So, Hartzmark  
23 gives us the ultimate fundamental truth. He gives us the truth  
24 that Elon Musk was considering it, and that funding wasn't an  
25 issue. It's just that the announcement was premature, even

## CLOSING ARGUMENT / SPIRO

1 according to Hartzmark. And the blog post was close enough.  
2 Not a material difference. That's why the stock doesn't go  
3 down.

4 But Hartzmark has to say something, he has to be  
5 different. If he says the blog post is accurate, it's the  
6 reveal, and they lose. He also can't say "It's far from  
7 secure" (Indicating quotation marks), whatever that means, in  
8 the *New York Times* articles, right, because then he would be  
9 saying basically the blog post was the reveal. So he has to  
10 come up with some new language to describe it, to describe the  
11 same thing you all know to be true. And so what he says is  
12 he's premature at best. But he doesn't really say it; he has  
13 to get it pulled from him on cross-examination.

14 And remember, these are just characterizations. New facts  
15 have to be revealed in a fraud case. Not characterizations and  
16 spins from paid experts and media reports. New facts. There  
17 were none.

18 If the blog post reveals supposed fraud on August 13th,  
19 then that's that. There's no class period, no damages, no  
20 statistical significance. If August 13th is the true state of  
21 affairs like Deepak Ahuja and every board member told you, then  
22 the stock increase that day proves the difference between the  
23 blog post and the tweets wasn't material. And so they're  
24 stuck. But they've got to get to the *New York Times* story.  
25 They've got to. They've got to.

## CLOSING ARGUMENT / SPIRO

1           So what do they do? That's the 14th. That's why they  
2       accuse him of fraud on the 14th. Remember? He announces that  
3       he's working with Goldman and Silver Lake, which now you know  
4       to be true? He hadn't technically signed the retainer letter  
5       yet? They need something to go wrong on the 14th to get past  
6       the 13th. They sued him for fraud on that.

7           And then the Model 3 news comes out. Remember that? The  
8       Model 3 news comes out. He tries to just jump over that. He  
9       doesn't deal with that. It confounds his numbers. But finally  
10      he gets to the 17th with the *New York Times* story.

11          And guess what? He tried to hide that from you, too.  
12      He'd been working for the plaintiff's firm for a long while.  
13      They've been back and forth. These answers are beautifully  
14      scripted. Open-ended question on the direct examination: What  
15      was the *New York Times* article about?

16          Not a word about Mr. Musk's health. Not a word. That was  
17      an effort to mislead you. Just what it was. Just what it was.

18          Under cross-examination, he stammered again on: What did  
19      I say? I thought I mentioned that.

20          Even in summation, they didn't show it to you. They just  
21      take out that one word, every time. Remember I'm the one who  
22      entered it into evidence.

23          (Documents displayed)

24               **MR. SPIRO:** Okay? I'm the one who entered it into  
25      evidence. This whole trial, they're focused on what Mr. Musk

## CLOSING ARGUMENT / SPIRO

1 says in his tweets: Don't look at the blog posts. Focus on  
2 Mr. Musk's tweets. Don't look at what he says in the *New York*  
3 *Times* article.

4 By the way, in this article? This is what he said  
5 (Indicating). They didn't tell you that. They hid that from  
6 you. Because these words, they leave you with the same  
7 fundamental truth. The same one. The same one that the *New*  
8 *York Times* editor saw when they picked the headline. Reads  
9 like a psych interview. Shows he isn't Tony Stark. Shows he  
10 can bleed, too. His words show his suffering.

11 (Document displayed)

12 **MR. SPIRO:** Remember what the expert said when asked  
13 about a different thing? You've got to take everything from  
14 the horse's mouth? Remember? When he talked about something  
15 else, said everything from the horse's mouth, it matters from  
16 the horse's mouth.

17 But this is Elon Musk's statements about regarding his  
18 health. This is the statement about funding. And nobody took  
19 anything else from this article, other than it was a statement  
20 about the man's health and his suffering.

21 (Document displayed)

22 **MR. SPIRO:** All the followup stories, all of the  
23 articles. Because again, the market cares about what Elon Musk  
24 is considering. And when his mind is suffering, they care  
25 about that too. That's why the market went up and down. Not

## CLOSING ARGUMENT / SPIRO

1 wordsmithing, not lawyers, not reporters, not experts. The  
2 expert eventually had to admit that it's true. He gave his  
3 interview, in his own words. That's material. If it's  
4 material, he didn't account for it. If he didn't account for  
5 it, that's it, game over. They can't prove damages.

6 They had to show that the decline -- remember, they  
7 couldn't show the way up? They had to show the decline was  
8 because of the bad words they don't like. Not because of his  
9 health and his suffering. They didn't. They had to  
10 distinguish any decline by his health. They didn't.

11 (Document displayed)

12 **MR. SPIRO:** And you know, I'm reminded of that  
13 conversation that Antonio had with those investors I told you  
14 about, where none of them cared about the tweets and none of  
15 them cared about anything, other than Mr. Musk's health and his  
16 mind. That's what they cared about. That's why the stock  
17 dropped.

18 (Document displayed)

19 **MR. SPIRO:** That's what the investors were asking  
20 questions about.

21 (Document displayed)

22 **MR. SPIRO:** That's what Egon Durban took from that  
23 story. That's even what JP Morgan took from that story. The  
24 only thing he could remember was Elon crying in that interview.  
25 They cared about Elon Musk's mind. Elon Musk was Tesla.



## CLOSING ARGUMENT / SPIRO

1 I'm briefly going to talk about the jury instructions. As  
2 you can see on the left, 10b-5, securities fraud, prohibits  
3 acts of deception.

4 (Document displayed)

5 **MR. SPIRO:** Acts of deception. They had the burden on  
6 every single element, every single element. And under  
7 reliance, you'll see there's like another four, it's basically  
8 like nine things they have to prove. There's nine of you.  
9 Hold them to their burden.

10 Material misrepresentation.

11 (Document displayed)

12 **MR. SPIRO:** Again, I'm not talking any more today.  
13 I'm done with technical and accurate word choices. Don't care  
14 about that right now.

15 They have to prove materiality, that it was important, and  
16 what he believed in his core that funding was not an issue.  
17 And now you know that funding wasn't an issue.

18 They have to prove that the state of affairs was not  
19 materially different than how the tweet was interpreted. They  
20 have to prove that the state of affairs is different in a  
21 material way from what people took from that tweet. They  
22 can't. It wasn't.

23 This example of revenue is telling. We talked about that.  
24 And it's critical. At the bottom of the instruction, it's  
25 circumstances. The circumstances of all of this matter. For

## CLOSING ARGUMENT / SPIRO

1    them to prove this, they have to prove that what the market  
2    took from that tweet was materially different than what the  
3    state of affairs were that the world now, because of this  
4    trial, finally knows.

5           (Document displayed)

6           **MR. SPIRO:** Reliance, first element, it's a very  
7    volatile stock. There's no evidence to the contrary. Fries  
8    told you as to the second point here, the slide I put up, there  
9    is no evidence to the contrary.

10          And again, the August 13th blog post ends the -- under any  
11    view of this evidence, ends the class period. It has to. So  
12    they can't do that either.

13          It's not an efficient market, by the way, according to  
14    them, right? Because they think that the information isn't  
15    rapidly going into the markets since the blog post had the  
16    market going up. So there's no efficient market; they didn't  
17    prove otherwise.

18          (Document displayed)

19          **MR. SPIRO:** Causation, okay, they didn't prove.  
20    Again, on the way up, the "Am considering" was the impact. We  
21    tease that out. Even their expert said, even their expert  
22    said: It would have had the same effect. Their expert, their  
23    sworn expert.

24          On the way down, it's obviously the *New York Times* story,  
25    it's obviously key man risk. It's obviously his suffering.

## CLOSING ARGUMENT / SPIRO

1 And there's no way to know, there's no way to know between the  
2 7th and the 13th, whether it's anything other than pure  
3 randomness. That means they can't prove loss causation. They  
4 can't prove it on the way up or the way down. In fact, the  
5 evidence they presented proves the opposite. It ends their  
6 case.

7 And so they don't get to their damages, which is where  
8 they were trying to get to the whole time. If that tweet never  
9 happens, if he keeps his considerations a secret, the stock and  
10 the world would not have been below where it was that day.  
11 They only get actual damages.

12 See that word "actual" in there? That whole show about  
13 consequential this and how yet in the other world where these  
14 people live, that the stock would have been below where it was  
15 on the 7th if we turned back the clocks of time? That's not  
16 what this jury instruction says. This is actual damages.

17 And again, this is the most important thing about it,  
18 frankly. They have the burden to prove, explain clearly in a  
19 matter of this importance, something you can take away and be  
20 comfortable with, be comfortable with, that you understand and  
21 digest well enough. They want you to just -- I think at one  
22 point he said: Oh, yeah just start adjusting the numbers if  
23 you want to give us a different number. You don't have to do  
24 that. You can't use conjecture or guesswork or speculation.

25 Damages are also an element they have to prove. Okay?

## CLOSING ARGUMENT / SPIRO

1 You don't just write zero. If they don't prove damages as an  
2 element, that's it. It's over.

3 And this is the big one. Look at the bottom. They didn't  
4 disaggregate.

5 (Document displayed)

6 **MR. SPIRO:** (As read)

7 "Plaintiff also has the burden of separating  
8 out the price decline, if any, caused by  
9 factors, if any, other than the alleged  
10 misrepresentation."

11 They told you, under oath, undisputed, they did not do  
12 that.

13 But nothing will ever satisfy them.

14 (Document displayed)

15 **MR. SPIRO:** Here we have the verdict. Just so you  
16 understand how it works, if you check "No" to liability, check  
17 "No" to liability, you've finished the questionnaire, you sign  
18 the verdict, you go home. That's how it works when plaintiffs  
19 don't prove their case. That's how it works.

20 But nothing will ever satisfy them. That's why they had  
21 to get to the *New York Times* article. You know, a handshake  
22 deal, somebody's word, that's not good enough. An email, the  
23 August 2nd email signed by the CEO of Tesla, that's not good  
24 enough.

25 They don't like emails with attachments, either. The blog

## CLOSING ARGUMENT / SPIRO

1 post with the attachments, you know if Mr. Musk had sent an  
2 email with a signed letter attached, they don't like that.

3 The board's response, their press release, they told  
4 Antonio Gracias: What is this, three sentences? This isn't  
5 good enough. It's too short.

6 The blog post of the 13th that nobody seems to read on  
7 their side, that everybody seems to have amnesia about, that  
8 was too long. The press release was too short, that was too  
9 long, nobody saw it. Nothing is ever good enough, because this  
10 is a case crafted by lawyers.

11 The fundamental truth Goldman Sachs knew, the fundamental  
12 truth Egon Durban knew, the fundamental truth Deepak Ahuja  
13 knew. These are independent witnesses. They told you the  
14 state of affairs.

15 So they have to go back to the board of directors. Must  
16 be wondering, what the he- -- why are they picking on the board  
17 of directors? Bad tweet, or bad board of directors. You  
18 didn't control him. Eat some ice cream. And so they had to  
19 come here, federal Court, and answer -- fly from wherever they  
20 lived, to answer in a securities fraud trial.

21 But you know what? They came. And they didn't phone it  
22 in or appear by video. One, one director that they want you to  
23 find liable is blind and couldn't be here. But everybody else  
24 came here and looked you in the eye, took an oath, and told the  
25 truth.

## CLOSING ARGUMENT / SPIRO

1 And if you believe them, you believe that the offer was  
2 real on August 2nd. You believe them that Deepak Ahuja, before  
3 anyone knew about the tweet, days before, before anybody spoke  
4 to Elon, told them what happened in the meeting. If you  
5 believe Robyn Denholm, that if anything wrong was happening  
6 here she would have stood down and walked out, if you believe  
7 them, doesn't just set them free. It sets him (Indicating)  
8 free.

9 Don't compromise on your verdict. Right? Add lots of  
10 counts. Two statements, lots of directors. They want you to  
11 compromise. They want a split. They want you to say to  
12 yourselves: Well, let the directors go. Let them go; we'll  
13 take Elon.

14 Don't do that. That's not justice. That's what they  
15 want. It's human nature to compromise. Right? We all know  
16 that. Justice is not on the 50-yard line. Don't split the  
17 baby. Don't compromise. We came all this way. They were in  
18 this together. We didn't come all this way for you to check  
19 one tweet and not the other. We came here for the truth, the  
20 whole truth. Please do not compromise.

21 I asked you those nine questions in opening statement,  
22 that they'll never answer. He's about to stand back up. I'm  
23 almost done. And then the case is yours. Those nine questions  
24 I said in opening statement, if he was trying to do something  
25 improper, why did he immediately flush it out? If he wasn't

## CLOSING ARGUMENT / SPIRO

1 genuinely considering this wasn't, he just going to be shown to  
2 not be genuinely considering it the next moment? Makes no  
3 sense. He's the largest shareholder. He never sold a share.  
4 What motive did he have?

5 And ultimately, if funding didn't matter, how can they  
6 base their whole case about funding?

7 Ultimately, if it did not go forward because of the  
8 shareholder vote like he said, how can they base their whole  
9 case about something he was right about?

10 And how come, when they issue the more detailed  
11 statements, the stock goes up? Not like it's a reveal of big  
12 fraud, the way the market goes up. It proves this wasn't  
13 material, and they can't prove their elements. And they didn't  
14 prove disaggregation. They can't. There's no debate. They  
15 can't.

16 And what motive does anybody have, what illicit intention,  
17 with all these lawyers and consultants and board members, what  
18 evidence is there that anyone was committing fraud? But he's  
19 going to come up, he's going to stand up and say "Fraud." He's  
20 is going to say he represents the shareholders. He's not a  
21 shareholder. Those good people that work at Tesla are  
22 shareholders. Deepak's a shareholder. The people he talks to  
23 on Twitter are shareholders. Elon did this for the  
24 shareholders. The reason it didn't go forward was because of  
25 the shareholders. And the shareholders that stuck with him,

## CLOSING ARGUMENT / SPIRO

1 the shareholders made 10X on their money, you learned that.  
2 This case is for them. And maybe a little bit left for the  
3 gamblers.

4 They don't get to direct your verdict. Nobody can direct  
5 your verdict. He doesn't get to spoonfeed you numbers,  
6 assuming you'll just accept them. The verdict is yours. Stay  
7 strong. Hold onto principal.

8 The securities laws are meant to protect against deceptive  
9 acts. He didn't intend to deceive anybody. You all know that.  
10 And when this is over, and it soon will be, you will get to go  
11 back to whatever it is that you do.

12 And I was going to give some long-winded speech -- but I'm  
13 running out of time -- about jury service and about how  
14 important this is, and how it's the most important thing when  
15 somebody that's sometimes unlikeable stands trial, when  
16 somebody who does other things like bad tweets -- some of his  
17 tweets I don't like either -- somebody like that, that's when  
18 the justice system matters most. That's where principal  
19 matters most.

20 And so when you're sitting alone, whenever that is, when  
21 you're fishing or hiking or cooking or having a glass of wine,  
22 whatever it is you do when you are alone, you will have these  
23 moments when you do. Today is the decision. You won't be able  
24 to come back here. You won't be able to come back and: Say I  
25 have a doubt; I don't think they proved it. You won't be able



## CLOSING ARGUMENT / SPIRO

1 to come back here and say: I know he didn't do fraud, I know  
2 he didn't commit fraud. But there's no way to come back here.  
3 You won't be able to do that. You have to decide today.

4 So as I told you, I'm done focusing, at least here, about  
5 wordsmithing and what's technically inaccurate. I would rather  
6 focus on what's undisputedly true and very, very real. And  
7 that is Sam Teller darting out of that conference room to get  
8 Deepak Ahuja and Martin Viecha there, in a state of disbelief,  
9 that Tesla is going to go private.

10 Thank God they were there. Thank God they were there that  
11 day with Elon. Because plaintiffs can call him whatever names  
12 they want, and they can say whatever they want, doesn't matter.  
13 You don't need his testimony. All the other witnesses were  
14 there that night. And the irrefutable evidence proves this was  
15 very real and not a fraud. They were there at the door of the  
16 room at Tesla. And that's that. They can't go any further  
17 with you now.

18 Neither can Antonio Gracias. He can't go into the jury  
19 room with you, either. Neither can Robyn Denholm, chairwoman  
20 of Tesla. She can't either, and neither can I. They have  
21 taken the truth and given it to you. The truth that he knew  
22 the PIF was in. The truth that he always had ample funding.  
23 And that he could always, of course, use his own financing.

24 We've been waiting five years for the truth. The truth is  
25 now with you, the case is with you. And it is up to you.

**REBUTTAL ARGUMENT / PORRITT**

1 Thank you.

2 **THE COURT:** All right. Thank you, Mr. Spiro.  
3 Mr. Porritt?

4 **MR. PORRITT:** Thank you, Your Honor.  
5 That was a lot of words, Mr. Spiro.

6 **REBUTTAL ARGUMENT**

7 **BY MR. PORRITT**

8 I didn't hear much about what the Court has instructed you  
9 to assume, the basic facts that should drive your determination  
10 in this case. And that is the assumption that the tweet  
11 "Funding secured" was false. That the tweet "Investor support  
12 is confirmed" is false. That is something you have to assume  
13 for purposes of your deliberation.

14 Another fact that you must assume is true for the purposes  
15 of your deliberation is that Elon Musk acted fraudulently when  
16 he made those tweets.

17 **MR. SPIRO:** Objection. He --

18 **MR. PORRITT:** That he acted with reckless disregard  
19 for the truth of those tweets. That is scienter, under Rule  
20 10b-5, that is fraud. That is the relevant state of mind to  
21 establish a fraud count under the securities laws. That is  
22 what the jury instructions say, as you should follow, and that  
23 is what you have been instructed to accept for the purposes of  
24 your deliberations.

25 So, all those fine words, Elon Musk fraudulently tweeted

## REBUTTAL ARGUMENT / PORRITT

1 on August 7th when he said "Funding secured" and when he said  
2 "Investor support is confirmed." That you must accept. And  
3 you can then deliberate on how material those fraudulent tweets  
4 were.

5 So once you put that in context, I'll now talk a little  
6 bit more about what Mr. Spiro had to say in response. And the  
7 next thing again, very clear, inarguable, what Mr. Spiro says  
8 is not evidence. He told you that at the beginning of his  
9 presentation. He then proceeded to testify for about two  
10 hours.

11 So, a few things. I would check your notes, check  
12 veracity of some of what Mr. Spiro says and check it against  
13 the transcript, because you might find some surprising things  
14 that he told you are just simply not true. I can think of a  
15 couple of examples.

16 He said if Elon Musk had published the August 2nd email,  
17 just the email, the stock price would have gone up even more.  
18 There is not a single shred of evidence to support that. They  
19 didn't present -- they could have called in an expert to say  
20 that. I don't think they would have found one --

21 **MR. SPIRO:** Objection; he's continuing to burden-shift  
22 on the experts. We don't have an obligation to call anybody.

23 **THE COURT:** Overruled. Overruled.

24 **MR. PORRITT:** So, think about that when you start  
25 considering some of the assertions made by Mr. Spiro in his

## REBUTTAL ARGUMENT / PORRITT

1 closing. He made some -- he gave all these colorful details as  
2 if he was in the room on July 31st. Of course, he wasn't in  
3 the room. All of the stuff of what people were feeling, what  
4 people saw.

5 Think of the evidence of the witnesses, themselves. And  
6 once again, remember, they're giving their memory from four  
7 years ago, after meeting with lawyers to refresh. I'm not  
8 saying they're lying.

9 But, look at the documents at the time. That is the more  
10 relevant, that is the more persuasive, that is the more  
11 credible evidence. As I said, documents do not lie. Documents  
12 speak clearly. You can trust the documents.

13 And if you look at our cases, look at the cases we  
14 presented, the evidence we've presented, most of it, most of  
15 the witnesses, we don't control. They're Tesla witnesses. But  
16 we rely on the documents. And our case is based on the  
17 documents.

18 And the documents clearly show that "Funding secured" --  
19 -- first of all, assumed to be true, but "Funding secured" and  
20 "Investor support is confirmed" were material. They did move  
21 the stock price. And then the stock price went down. That is  
22 the evidence. That is the data. He says: Trust the data. I  
23 agree. Look at the data.

24 So another thing Mr. Spiro said, Elon Musk was always  
25 going to invest his own money in this deal, apparently. If you

## REBUTTAL ARGUMENT / PORRITT

1 look at what he actually said, if you look at Exhibit 12, it is  
2 in evidence. This is the email --

3 (Document displayed)

4 **MR. PORRITT:** This is supposedly the email that we  
5 don't like to talk about, that we're hiding.

6 Look what he says. This has nothing to do with  
7 accumulating control: I own 20 percent; I don't envisage that  
8 increasing substantially.

9 If he uses his own money, of course his own percentage is  
10 going to increase. Here he's saying he's not going to use his  
11 own money to increase his ownership of Tesla.

12 **MR. SPIRO:** Objection --

13 **MR. PORRITT:** But apparently --

14 **MR. SPIRO:** That was not what it says.

15 **THE COURT:** Hold on, hold on.

16 What?

17 **MR. SPIRO:** That's not what it says. He's misstating  
18 the document.

19 **THE COURT:** Objection overruled.

20 **MR. PORRITT:** You know, Mr. Spiro gave his version of  
21 the facts. Now I'll just point out what the facts actually  
22 say. And here we go. That is what this is saying.

23 So now he's come up with this *ex post* rationalization that  
24 he had his own money and that was the deal. But that wasn't  
25 what he said at the time. So look again. Look at what the

## REBUTTAL ARGUMENT / PORRITT

1 documents said at the time.

2 And when we look at the PIF minutes and the relationship  
3 of the PIF, look at the PIF minutes, look at the NDA, look at  
4 the text from Yasir. Mr. Spiro said that we didn't want him  
5 here. We tried to get him here, too.

6 **MR. SPIRO:** That --

7 **MR. PORRITT:** So, that is not the case. Look at what  
8 he said. Yasir has no motive to lie in those texts. They're  
9 private text messages between him and Elon Musk. He never  
10 thought they were going to see the light of day. They speak  
11 the truth.

12 Elon Musk, at that point, was a defendant in a government  
13 investigation.

14 **MR. SPIRO:** Objection to that. That's not true.

15 **THE COURT:** Overruled.

16 **MR. PORRITT:** Now, Mr. Spiro also passed a lot of  
17 aspersions on myself, my colleagues, Mr. Littleton, saying how  
18 we chose -- we cherrypicked everything, apparently. We  
19 cherrypicked "Funding secured" as the important text. We  
20 cherrypicked the class period.

21 Well, if we can pull up Slide 63, "Funding secured."

22 (Document displayed)

23 **MR. PORRITT:** This is Deepak Ahuja, Mr. Spiro's best  
24 friend, saying -- his is August 7th. Okay?

25 August 7th, 3:11 p.m. (As read):

## REBUTTAL ARGUMENT / PORRITT

1 "We are getting a lot of inquiries from  
2 investors, SEC and the media to better  
3 understand the comment, 'Funding secured.'"

4 And you saw, Dr. Hartzmark explained it all about how  
5 "Funding secured" was an intense focus for analysts, media.  
6 You saw the news clip. Some random talking head, according to  
7 Mr. Spiro. CNBC, the most widely-watched financial news  
8 channel in the country. Mike Santoli, a regular columnist,  
9 speaking from the floor of the New York Stock Exchange. That's  
10 not some random person. And all it is about is about "Funding  
11 secured."

12 You heard Ryan Brinkman. Analyst for JP Morgan. Another  
13 person who apparently Elon Musk likes to smear in his attempt  
14 to get out of the consequences of his lies. You saw Ryan  
15 Brinkman on videotape. He lives in New York and wasn't  
16 prepared to fly out here. He was cross-examined on that video  
17 by Mr. Musk's counsel. But apparently he was hiding from  
18 cross-examination.

19 But you heard him. You saw him. Does he look like  
20 someone with an axe to grind? Does he look like someone who's  
21 out to get Elon Musk? He's just someone who is doing his job,  
22 which is to provide his honest and objective opinion on Tesla  
23 and its stock price, to help investors. If he gets the price  
24 wrong consistently, he gets fired. So he's just doing his  
25 best. And that is what he told us. And his reports clearly

## REBUTTAL ARGUMENT / PORRITT

1 show -- they're a pattern you can follow that he believes the  
2 tweets, believes Elon Musk is going private. "Funding  
3 secured," 420, "Investor support is confirmed." He took into  
4 account all of that and wrote his report.

5 And then he learned -- and again, this was crystal clear  
6 in his testimony. Mr. Spiro says he doesn't mention the *New*  
7 *York Times* article in his analyst report. But if you read in  
8 his testimony, he says very clearly, it was the *New York Times*  
9 article that convinced him that those "Funding secured" tweets,  
10 the August 7th tweets were no longer accurate or true. And  
11 that is what led him to change his rating to issue his new  
12 report.

13 He didn't do it on August 14th after the blog post. He  
14 read the blog post. He didn't change then. He changed it  
15 after the *New York Times* article.

16 Once again, if you could pull up -- we were criticized for  
17 saying that we were -- the August 17th date, the class period  
18 is somehow contrived because we're desperate for some *New York*  
19 *Times*, you know, (Inaudible) --

20 (Reporter clarification)

21 **MR. PORRITT:** We're desperate to get some contrived  
22 class period to get damages.

23 Here is -- you can see that chart. That's data. That's  
24 not something we created. That's the data. And that shows the  
25 clear reaction of stock prices and stock option prices going,



## REBUTTAL ARGUMENT / PORRITT

1 ending on August 17th. That's why the class period is August 7  
2 to August 17th.

3 And Mr. Spiro also attacked us for not having any  
4 definition of "Funding secured." We have put forth many --

5 **THE COURT:** You can take the poster down, if you're  
6 not going to use it again.

7 (Request complied with by counsel)

8 **MR. PORRITT:** Put forth many and consistent  
9 definitions of "Funding secured." We started off with a  
10 definition by Martin Viecha. He says, as firm as it gets.  
11 Funding is available without conditions. That's Martin Viecha.  
12 Mr. Spiro didn't talk about those emails from Martin Viecha.

13 Ryan Brinkman, again: Funding is either secured or is  
14 unsecured. That's a nice definition for you.

15 Funding -- Joe Fath -- locked and loaded. A hundred  
16 percent ready to go. You cannot read the evidence about the  
17 PIF's interaction with Elon Musk and say that funding was  
18 100 percent ready to go. They didn't even know how much was  
19 needed.

20 On August 13th, the blog post, I think almost we agree,  
21 Mr. Spiro and I, because he says the August 13th blog post  
22 confirms the -- the August 7th tweets. And we also say the  
23 August 13th blog post helped confirm the August 7th tweets. I  
24 guess our difference of opinion is, of course, the August 7th  
25 tweets are false, and fraudulently so, and that's what you have

**REBUTTAL ARGUMENT / PORRITT**

1 to assume when you're doing your deliberation so they are  
2 confirming -- August 13th blog post confirms fraudulent tweets.  
3 That is why the stock price didn't go down. It's not a  
4 corrective disclosure, it's not disclosing the fraud. It's  
5 continuing the fraud.

6 And even though it's not an actionable misrepresentation  
7 here for you to decide, that doesn't matter when it comes to  
8 calculating the damage. The harm was in the stock price from  
9 August 7th, and it stayed until August 17th, and the  
10 August 13th blog post did not remove it. That is the important  
11 fact.

12 And that is what was explained by Dr. Hartzmark in his  
13 analysis when he went through. And again, they tell you about  
14 he doesn't disaggregate. That was an attack on Dr. Hartzmark,  
15 that he did not disaggregate. That is just not true.

16 Dr. Hartzmark disaggregated -- first of all, disaggregated  
17 market effects. That was very clear. That's what gets him  
18 from -- takes out \$7 of the decline due to market effects,  
19 nothing to do with the fraud.

20 And then he looked at, qualitatively, every single news  
21 story. None of the negative price movement during the class  
22 period was attributable to any cause other than the fraudulent  
23 tweets.

24 And he looked at the increase. Mr. Spiro talked about  
25 there was no statistical significant decline between August 7th

## REBUTTAL ARGUMENT / PORRITT

1 and August 13th, and that means therefore it's just some random  
2 event. You look at the chart. You see the evidence. You saw  
3 the evidence that Dr. Hartzmark described. You see the analyst  
4 reports. Is this some random event? What is going on during  
5 this period?

6 There are 2,400 news stories in ten days. Fifty analyst  
7 reports, five a day. Normally there's one every -- usually  
8 there's five every three months. So, that is what is going on  
9 here.

10 And we do have a statistical increase, statistically  
11 significant price move, and it's at the beginning of the class  
12 period after the tweets. Mr. Spiro didn't talk about that.  
13 That was introduced by the tweets, that is caused by the  
14 tweets. Where did it go? According to Mr. Spiro, it just  
15 vanished into thin air. The markets do not work that way.  
16 Mister -- Dr. Hartzmark worked it out, came up with a  
17 calculation and presented that calculation.

18 Now they say that Professor Heston concedes that  
19 apparently nothing to do with the price movement was anything  
20 to do with the "Funding secured" statement.

21 Professor Heston wasn't a damages expert. He was talking  
22 about the option prices and the movements on option prices.  
23 And in any event, that statement, Mr. Spiro left out or didn't  
24 emphasize a key contingent on that.

25 Professor Heston said if it was believed, at the same --

**REBUTTAL ARGUMENT / PORRITT**

1 if the market believed the information without "Funding  
2 secured," then you would expect the price movement.

3 Well, the reaction to the "Funding secured" from  
4 everybody, from Ryan Brinkman, from Joe Fath, Martin Viecha,  
5 all show that "Funding secured" fundamentally changed and made  
6 it more believable that Elon Musk was going private at 420.  
7 Of course, it changed it. Elon Musk intended it to change.  
8 Elon Musk intended "Funding secured" to affect investors and  
9 tell them something about the first sentence.

10 So this supposed great concession that kills our damages  
11 theory is nothing of the kind. It's just an empty lawyer trick  
12 for Mr. Spiro to come up here and tell you.

13 (Note handed up to the Court)

14 **THE COURT:** You have about five minutes left.

15 **MR. PORRITT:** I'm just wrapping up, Your Honor.

16 And finally, you know, we had some testimony, you know,  
17 almost emotional testimony from Mr. Spiro about Elon Musk's  
18 care for retail investors, his investors, small investors.

19 What we have -- you've seen two small investors. The only  
20 two small investors that testified in this trial have been  
21 Mr. Littleton and Tim Fries. Both of whom are supporters of  
22 Tesla. Both of whom believed Elon Musk at the time. Both of  
23 them have purchased Tesla motor vehicles. These are not people  
24 who are out to get Elon Musk. They are not looking for a  
25 payday at the expense of Elon Musk. They believed in him. And

**REBUTTAL ARGUMENT / PORRITT**

1 they were let down and betrayed by him when he made these false  
2 tweets.

3 And what does Elon Musk do? He's retained all these  
4 lawyers, and all they do is smear Glen Littleton and Tim Fries  
5 from one side of this courtroom to the other. Is that how you  
6 treat small investors? Is that how a person who cares about  
7 small investors acts to them?

8 Elon Musk has not expressed the slightest bit of regret  
9 about the harm that he has put Glen Littleton through. That  
10 Glen Littleton felt that his almost entire world was being  
11 destroyed that afternoon of August 7th when he saw his life  
12 savings that he placed into Elon Musk, that he believed in, was  
13 going up in smoke around him. All as a result of this tweet  
14 that Elon Musk tweeted on the way to the airport, and then got  
15 into his plane and flew off. That is what we're talking about  
16 here. So don't listen to this high-minded rhetoric about Elon  
17 Musk is out for the little guy. Because that's just not true.

18 And finally, I said at the beginning of my closing, you  
19 know, this is an important trial. This is about rules. This  
20 is about applying rules to billionaires like Elon Musk. All of  
21 corporate America is watching this trial. And looking for your  
22 decision.

23 The decision is: Do the rules apply to everyone, or can  
24 Elon Musk do whatever he wants, and not face the consequences?

25 I ask you, don't let that happen. Consider your verdict.

**JURY INSTRUCTIONS**

1 Don't compromise. Find every statement false, as it should be  
2 found false. Find Elon Musk and Tesla liable. And return,  
3 record the full amount of damages. And I trust you will do  
4 that.

5 So thank you, thank you for your time.

6 And, that completes my presentation. Thank you.

7 **THE COURT:** All right. Thank you, Mr. Porritt.

8 Let me give you some final instructions, members of the  
9 jury.

10 And I don't know if we can have help putting those up,  
11 starting with No. 17.

12 (Document displayed)

13 **THE COURT:** There we are, okay. Thank you.

14 **JURY INSTRUCTIONS**

15 **BY THE COURT**

16 First, your duty to deliberate.

17 When you begin your deliberations elect one member of the  
18 jury as your foreperson who will preside over the deliberations  
19 and speak for you here in court.

20 You will then discuss the case with your fellow jurors to  
21 reach agreement if you can do so. Your verdict must be  
22 unanimous.

23 Each of you must decide the case for yourself, but you  
24 should do so only after you have considered all the evidence,  
25 discussed it fully with the other jurors, and listened to the

**JURY INSTRUCTIONS**

1 views of your fellow jurors.

2 Do not be afraid to change your opinion if the discussion  
3 persuades you that you should. But do not come to a decision  
4 simply because other jurors think it is right.

5 It is important that you attempt to reach a unanimous  
6 verdict but, of course, only if each of you can do so after  
7 having made your own conscientious decision. Do not change an  
8 honest belief about the weight and effect of the evidence  
9 simply to reach a verdict.

10 Perform these duties fairly and impartially. Do not allow  
11 personal likes or dislikes, sympathy, prejudice, fear, public  
12 opinion, or biases, including unconscious biases, to influence  
13 you. You should also not be influenced by any person's race,  
14 color, religion, national ancestry or gender, sexual  
15 orientation, profession, occupancy [sic], celebrity, economic  
16 circumstances or position in life or in the community which are  
17 not based on the evidence presented at trial.

18 And please do not take anything I may say or do during the  
19 trial as indicating what I think of the evidence or what your  
20 verdict should be. That is entirely up to you.

21 It is your duty as jurors to consult with one another and  
22 to deliberate with one another with a view towards reaching an  
23 agreement if you can do so. During your deliberations, you  
24 should not hesitate to reexamine your own views and change your  
25 opinion if you become persuaded that it is wrong.

**JURY INSTRUCTIONS**

1 Conduct of the jury.

2 Because you must base your verdict only on the evidence  
3 received in the case and on these instructions, I remind you  
4 that you must not be exposed to any other information about the  
5 case or the issues it involves.

6 Except for discussing the case with your fellow jurors  
7 during your deliberations:

8 Do not communicate with anyone in any way and do not let  
9 anyone else communicate with you in any way about the merits of  
10 the case or anything to do with it. This includes discussing  
11 the case in person, in writing, by phone, tablet, computer, or  
12 any other means, via email, via text messaging, or any internet  
13 chatroom, blog, website, or application, including but not  
14 limited to Facebook, YouTube, Twitter, Instagram, LinkedIn,  
15 Snapchat, Tik-Tok, or any other forms of social media. This  
16 applies to communication with your family members, your  
17 employer, the media or press, and the people involved in the  
18 trial. If you are asked or approached in any way about your  
19 jury service or anything about this case, you must respond that  
20 you have been ordered not to discuss the matter and to report  
21 the contact to the Court.

22 Do not read, watch, or listen to any news or media  
23 accounts or commentary about the case or anything to do with  
24 it; do not do any research, such as consulting dictionaries,  
25 searching the internet, or using other reference materials; and



**JURY INSTRUCTIONS**

1 do not make any investigation or in any other way try to learn  
2 about the case on your own. Do not visit or view any place  
3 discussed in the case. Do not use internet programs or other  
4 devices to search for or view any place discussed during the  
5 trial.

6 Also do not do any research about the case -- about this  
7 case, the law, or the people involved, including the parties,  
8 the witnesses or the lawyers, until you have been excused as  
9 jurors. If you happen to read or hear anything touching on  
10 this case in the media, turn away and report it to me as soon  
11 as possible.

12 These rules protect each party's right to have this case  
13 decided only on evidence that has been presented here in court.  
14 Witnesses here in court take an oath to tell the truth, and the  
15 accuracy of their testimony is tested through the trial  
16 process. If you do any research or investigation outside the  
17 courtroom, or gain any information through improper  
18 communications, then your verdict may be influenced by  
19 inaccurate, incomplete or misleading information that has not  
20 been tested by the trial process. Each of the parties is  
21 entitled to a fair trial by an impartial jury, and if you  
22 decide the case based on information not presented in court,  
23 you will have denied the parties a fair trial. Remember, you  
24 have taken an oath to follow the rules, and it is very  
25 important that you follow these rules.

**JURY INSTRUCTIONS**

1 A juror who violates these restrictions jeopardizes the  
2 fairness of these proceedings. If any juror is exposed to any  
3 outside information, please notify the Court immediately.

4 Communication with the Court.

5 If it becomes necessary during your deliberations to  
6 communicate with me, you may send a note through the courtroom  
7 deputy, signed by your presiding juror or by one or more  
8 members of the jury. No member of the jury should ever attempt  
9 to communicate with me except by a signed writing. I will  
10 communicate with any member of the jury on anything concerning  
11 the case only in writing, here in open court. If you send out  
12 a question, I will consult with the parties before answering  
13 it, which may take some time. You may continue your  
14 deliberations while waiting for the answer to any question.  
15 Remember that you are not to tell anyone -- including me -- how  
16 the jury stands, numerically or otherwise, until after you have  
17 reached a unanimous verdict or have been discharged. Do not  
18 disclose any vote count in any note to the Court.

19 Request for read back.

20 During deliberations, you will not be given a transcript  
21 of the trial testimony or any demonstrative slide that has not  
22 been admitted into evidence. If during jury deliberations, one  
23 or more members of the jury decide that they would like a  
24 readback of some or all of a witness's testimony or to review  
25 one or more demonstrative slides, you may send a note through

## PROCEEDINGS

1 the courtroom deputy, signed by your presiding juror or by one  
2 or more members of the jury. I will consider the request.

3 Return of verdict.

4 A verdict form has been prepared for you. After you have  
5 reached unanimous agreement on a verdict, your foreperson  
6 should complete the verdict form according to your  
7 deliberations, sign and date it, and advise the courtroom  
8 deputy that you are ready to return to the courtroom.

9 With that I'm going to direct the jury to commence your  
10 deliberations. As I indicated, you will have access to all the  
11 evidence that has been admitted. And an index, I understand,  
12 has been prepared for you to help you try to find pieces of  
13 evidence, if you find that useful. You will also be given  
14 multiple copies of the jury instructions, in case you need to  
15 refer to that, as well as the verdict form. So with that  
16 direction, I'm going to charge the jury with the -- to commence  
17 the deliberations process. Thank you.

18 **THE COURTROOM DEPUTY:** All rise for the jury.

19 (Jury excused)

20 (The following proceedings were held outside of the  
21 presence of the Jury)

22 **THE COURT:** All right. So, Vicky has your contact  
23 information. You should stay within five, five-to-ten-minute  
24 radius so that we can gather if we get any communication from  
25 the jury.

## PROCEEDINGS

1           **MR. SPIRO:** Yes, Your Honor.

2           **MR. PORRITT:** I have just one quick thing to note for  
3 the record, Your Honor.

4           During Mr. Spiro's closing, he published to the jury the  
5 Slide 69 which is an exhibit you, a slide you maintained,  
6 upheld an objection to -- and it was shown to the jury, in any  
7 event. So, that ship has sailed obviously but we just want to  
8 note for the record that that occurred.

9           **MR. SPIRO:** I don't -- not only do I not know that  
10 that happened, I certainly did not do that consciously. You  
11 know, Mr. Porritt also told them in his rebuttal that he was a  
12 defendant in a federal case, which is in the level of severity  
13 of egregiousness, almost mistriable. So I don't think we  
14 should be going tit for tat on that.

15           **THE COURT:** All right. Well, let's -- the ship has  
16 sailed in any event, and, and at this juncture, I'm not going  
17 to give any further instructions to the jury. And so, we will  
18 await word from the jury.

19           I think the preliminary indication is that if they need  
20 to, they were going to stay in session through a good part of  
21 this afternoon, that is my understanding, Ms. Ayala?

22           **THE COURTROOM DEPUTY:** Yes, until 4:00.

23           **THE COURT:** Until 4:00. So, you can count on spending  
24 the better part of your afternoon around these hereabouts.

25           **MR. PORRITT:** Very good, Your Honor.

## PROCEEDINGS

1           **THE COURT:** So I will be in touch.

2           **MR. SPIRO:** Can we just see the index so we can make  
3 sure all sides are --

4           **THE COURT:** Oh, have you not?

5           **MR. PORRITT:** The index is agreed --

6           **THE COURT:** You need to speak into the microphone.

7           **MR. SPIRO:** We will confirm amongst ourselves to make  
8 sure we have given the Court an index that both sides agree on.

9           **MR. PORRITT:** I think the form of index was agreed,  
10 Ms. Ayala --

11           **THE COURTROOM DEPUTY:** I was given the flash drive  
12 this morning and you are going to upload it into the PC --

13           **MR. SPIRO:** Well, until we do that, let's make sure  
14 that both sides agree on it because I don't know --

15           **THE COURT:** Why don't you do that immediately.  
16 Because I promised we would get that to them. I had understood  
17 that both sides had reviewed the index and agreed --

18           **THE COURTROOM DEPUTY:** Uh-huh.

19           **THE COURT:** But if that hasn't happened, we better do  
20 that right now.

21           **THE COURTROOM DEPUTY:** The jury is having lunch now.

22           **MR. SPIRO:** The exhibit index was agreed, what wasn't  
23 agreed is where we left off is we're not, I'm not putting, I  
24 want you to review these depo clips and they are not putting we  
25 want you to review these demonstratives on the exhibit list.

## PROCEEDINGS

1 That's -- that was the only issue.

2 So if the exhibit list is just the exhibits, as it is in  
3 every trial, then there is no issue.

4 **MR. APTON:** Your Honor, it's the exhibits plus a list  
5 of the demonstratives that were shown to the jury with  
6 descriptions. As we discussed earlier.

7 **MR. SPIRO:** Yeah, that's not acceptable. And that --  
8 that never happens in trials, and we would object to that. The  
9 demonstratives --

10 **THE COURT:** So that had not been stipulated to?

11 **MR. SPIRO:** Absolutely not. In fact, there's case law  
12 in my hand that says we shouldn't do that. So I'm not  
13 stipulating to that. It never happens in trials.

14 Just like I can't write into the -- the verdict form other  
15 things I want them to ask for --

16 **THE COURT:** If it's not stipulated to, it needs to be  
17 removed.

18 **MR. SPIRO:** Thank you.

19 **THE COURT:** I thought it had been stipulated to. So  
20 let's square that away.

21 **MR. APTON:** I thought it was, too, Your Honor. We  
22 were here in court the other day. And when we left off,  
23 everything was fine. There was going to be a list of  
24 demonstratives.

25 Nothing was going to be put into evidence but --

## PROCEEDINGS

1           **THE COURT:** No, I understand that, I understand that.  
2 But there is an issue about suggestiveness, if you begin to  
3 identify certain demonstratives, even if those are the ones  
4 shown, because they're not in evidence, so the jury will have  
5 to ask for it.

6           I had raised it, whether that was going to be acceptable  
7 to facilitate it. And my understanding was the parties were  
8 going to talk about it. And I didn't -- I hadn't heard back  
9 until just now that there's a disagreement about that. And if  
10 there's a disagreement about that, I'm not going to submit it  
11 to the jury.

12           **MR. APTON:** Sure, Your Honor, I wasn't aware there  
13 wasn't an agreement.

14           **THE COURT:** So we should withdraw --

15           **THE COURTROOM DEPUTY:** The jury doesn't have anything  
16 yet.

17           **THE COURT:** Okay, good.

18           **THE COURTROOM DEPUTY:** I was waiting for them to have  
19 lunch.

20           **THE COURT:** All right, so let's get a clean copy,  
21 corrected copy of that index so we can get it to them.

22           Now, the parties have signed off on the exhibit list.  
23 Correct?

24           **THE CLERK:** I have the confirmation right here,  
25 signed.

## PROCEEDINGS

1           **MR. SPIRO:** The exhibit list, yes.

2           **THE COURT:** I don't want any misunderstanding about  
3 that.

4           **MS. TRIPODI:** Your Honor, there was -- and I'm not  
5 sure that this has been resolved, but there was, in the exhibit  
6 list submitted by defendants, several of the descriptions for  
7 the exhibits.

8           When we had initially done it, we used what we did for the  
9 Court where we described -- like, for example the PIF meeting  
10 minutes, it said "Minutes of PIF," and that had been changed on  
11 the exhibit list defendants circulated to just say "Meeting  
12 minutes."

13           So we would ask that we could go back to the  
14 descriptions -- which were not prejudicial, but they were the  
15 descriptions that were in the original joint exhibit list that  
16 we submitted to the Court.

17           **THE COURT:** Well, now you're telling me that there is  
18 a dispute over the exhibit list. So how -- how many, how many  
19 problems do we have here?

20           **MR. SPIRO:** Let us get -- if it's okay with the Court,  
21 because this is above my head a little bit, if we can just  
22 speak for five minutes I bet we can work it out and alleviate  
23 that --

24           **THE COURT:** All right, I prefer you do that.

25           **MS. TRIPODI:** Thank you.



## PROCEEDINGS

1           **THE COURT:** But if not, please let me know, because I  
2 do want to get them the list and I want a stipulated-to list.

3           **MS. TRIPODI:** Understood, Your Honor. Thank you.

4           **THE COURT:** All right. Thank you. We will reconvene  
5 when the call. Let me --

6           **THE COURTROOM DEPUTY:** Court is in recess.

7           **THE COURT:** Let me just say that -- let me commend  
8 counsel for a very hard-fought case. I think each side was  
9 obviously well-represented in this matter.

10           I will complain that you haven't made it particularly easy  
11 on the Court, notwithstanding my attempts to rein you in, noted  
12 by even late filings as of last night. But I've survived, and  
13 we're here.

14           **MR. SPIRO:** Yes. You didn't make it easy on the  
15 defense, either, Your Honor, but we appreciate the Court's hard  
16 work, and I genuinely mean that. And to all of the folks that  
17 work beside you.

18           **THE COURT:** Well, every case is important. And of  
19 course, this case is no exception, and I -- and I think you've  
20 noticed that this has been a very attentive jury. Whatever  
21 happens, this jury seems to have been very attentive.

22           And I will note one thing as an aside. It has nothing to  
23 do with this case, but I found it sort of interesting. When I  
24 look at that jury it's a very -- appears to be a very diverse  
25 jury, somewhat reflective of our district here. And not

## PROCEEDINGS

1 unusual, which I think is a good thing. I mean, we try to  
2 achieve a fair cross-section as best we can, of the jury pool.

3 I will say that the counsel tables don't quite reflect  
4 that same richness. But I just mention that. Has nothing to  
5 do with this case. But I do think, you know, that that's a  
6 larger issue for another day.

7 **MR. SPIRO:** It's important. Important, and well said.  
8 Thank you, Your Honor.

9 **MR. PORRITT:** Thank you, I appreciate your comments  
10 too, Your Honor.

11 **THE COURT:** Thank you.

12 **MR. PORRITT:** And your hard work.

13 **THE COURTROOM DEPUTY:** Court is in recess.

14 (Recess taken from 12:52 p.m. to 2:48 p.m.)

15 (The following proceedings were held outside of the  
16 presence of the Jury)

17 **THE COURT:** All right. Have a seat, everyone. Okay,  
18 we have word that the jury has reached a verdict. That's why  
19 we're calling you back. So if everybody's here, let's invite  
20 the jurors in.

21 (A pause in the proceedings)

22 (The following proceedings were held in the presence of  
23 the Jury)

24 **THE COURTROOM DEPUTY:** All rise for the jury.

25 **THE COURT:** All right, have a seat. So members of the

## PROCEEDINGS

1 jury, I understand that the jury has reached a verdict in this  
2 the matter?

3 (Members of the Jury indicates in the affirmative)

4 **THE COURT:** All right, and I see Mr. Cadogan shaking  
5 your head.

6 **JURY FOREPERSON:** Yes.

7 **THE COURT:** And you are the foreperson.

8 **JURY FOREPERSON:** Yes.

9 **THE COURT:** And you have the verdict in hand there?

10 **FOREPERSON:** I do.

11 **THE COURT:** All right. Ms. Ayala, could you retrieve  
12 the envelope, please.

13 **THE COURTROOM DEPUTY:** Thank you.

14 (Document handed up to the Court)

15 **THE COURT:** Thank you.

16 **THE COURTROOM DEPUTY:** You're welcome.

17 (The Court examines document)

18 **THE COURT:** All right. Ms. Ayala, could you read the  
19 verdict, please.

20 **THE COURTROOM DEPUTY:** Thank you.

21 Ladies and gentlemen of the jury, listen to your verdict  
22 as it will stand recorded.

23 United States District Court, Northern District of  
24 California, In Regarding Tesla Inc. Securities Litigation.  
25 Case No. 18-4865. Verdict Form.

## PROCEEDINGS

1 RULE 10B-5 CLAIM: LIABILITY.

2 Statement No. 1: "Am considering asking (sic) Tesla  
3 private at 420. Funding secured."

4 No. 1. Has Plaintiff proved their Rule 10b-5 claim  
5 against Elon Musk for Statement No. 1, identified above?

6 No.

7 No. 2. Has Plaintiff proved their Rule 10b-5 claim  
8 against Tesla, Inc., for Statement No. 1, identified above?

9 No.

10 Statement No. 2: "Investor support is confirmed. Only  
11 reason why this is not certain is that it's contingent on a  
12 shareholder vote." [sic]

13 No. 3. Has Plaintiff proved their Rule 10b-5 claim  
14 against Elon Musk for Statement No. 2, identified above?

15 No.

16 No. 4. Has Plaintiff proved their Rule 10b-5 claim  
17 against Tesla Inc. for Statement No. 2 identified above?

18 No.

19 IF YOU CHECKED "YES" FOR ONE OR MORE QUESTIONS FOR  
20 STATEMENT NO. 1 AND 2, PLEASE PROCEED TO THE NEXT PAGE.

21 IF YOU CHECKED NO FOR EVERY QUESTION IN STATEMENTS 1 AND  
22 2, PLEASE PROCEED TO SECTION E.

23 **THE COURT:** And the verdict's been signed by the  
24 foreperson on Section E?

25 **THE COURTROOM DEPUTY:** It has.

## PROCEEDINGS

1           **THE COURT:** All right. Well, let me ask, ladies and  
2 gentlemen of the jury, is that the verdict of -- is that your  
3 verdict?

4           (Jury indicates in the affirmative)

5           **THE COURT:** Everybody's shaking their head. Any  
6 request to poll the jury?

7           (Off-the-Record discussion between counsel)

8           **MR. PORRITT:** Yes, Your Honor. Please.

9           **THE COURT:** All right. Let me ask each of you then,  
10 Juror No. 1, Mr. Tinapay, is that your verdict?

11          **JUROR NO. 1:** Yes.

12          **THE COURT:** Juror No. 2, Mr. Martinez, is that your  
13 verdict?

14          **JUROR NO. 2:** Yeah.

15          **THE COURT:** And Juror No. 3, Ms. Richard, is that your  
16 verdict?

17          **JUROR NO. 3:** Ricard. Yes.

18          **THE COURT:** And Mr. Sharma, is that your verdict?

19          **JUROR NO. 4:** Yes.

20          **THE COURT:** And Mr. Moore, is that your verdict?

21          **JUROR NO. 5:** Yes.

22          **THE COURT:** And Ms. Cazessus, is that your verdict?

23          **JUROR NO. 6:** Yes.

24          **THE COURT:** And Mr. Xi, is that your verdict?

25          **JUROR NO. 7:** Yes.

## PROCEEDINGS

1           **THE COURT:** And Mr. Torres, is that your verdict?

2           **JUROR NO. 8:** Yes.

3           **THE COURT:** And Mr. Cadogan, is that your verdict?

4           **JURY FOREPERSON:** Yes.

5           **THE COURT:** All right. The record will reflect the  
6 jury has reached a unanimous verdict, as read. So that will  
7 conclude the trial in this case.

8           So let me, on behalf of the parties and the Court, thank  
9 you for your service. It's been three fairly intense weeks.  
10 And I know that you've paid very close attention throughout the  
11 entirety of this trial, and went through a fairly extensive  
12 process just to get you here and get you to this point. And we  
13 appreciate the hard work and the attention and your diligence,  
14 as well as your timeliness in being here every day. So again,  
15 on behalf of the parties and the Court, let me thank you.

16           This underscores why we have a jury system here, that this  
17 case has been submitted to a jury of -- that represents a fair  
18 cross-section of this community to render a verdict and  
19 determine the facts and apply the law to the facts. And so,  
20 this is democracy at work. So thank you for your service.

21           It is my practice to allow to jurors -- should they wish,  
22 up to them if they want to speak to the attorneys after. But  
23 it's also their prerogative not to speak with anyone.

24           But I, I do make it a practice to meet at least with the  
25 -- and thank the jurors and get any feedback about the process

## PROCEEDINGS

1 before you leave. I know it's a Friday, so I don't know if  
2 maybe you are all interested in getting going, but if you have  
3 a few moments I would like to debrief with you just a bit and  
4 find out if there's anything you think we can do to make this  
5 process better.

6 And then, if you are inclined to speak with any of the  
7 attorneys, I can indicate to them that they should stick around  
8 and you might -- you could, if you want, come back and talk to  
9 them. If not, we'll just tell them that you're not inclined to  
10 speak with them.

11 So, with that, the jury is discharged. And thank you  
12 again for your service.

13 And counsel, if you could hang out a bit and let me find  
14 out whether jurors are interested in speaking with you at all.  
15 And plus, we can try to see about further steps from here.

16 All right. Thank you.

17 **THE COURTROOM DEPUTY:** All rise for the jury.

18 (Jury excused)

19 (The following proceedings were held outside of the  
20 presence of the Jury)

21 **THE COURT:** All right, so I'll be back in about 20  
22 minutes or so.

23 (Conclusion of record of proceedings)  
24  
25

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**CERTIFICATE OF REPORTER**

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



/s/ Belle Ball

Belle Ball, CSR 8785, CRR, RDR

Saturday, February 4, 2023